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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2021

PRONOUNCED ON : 14.07.2021

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

and

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

H.C.P. No.721 of 2021

C. Yazhini

Petitioner

vs.

- 1 Union of India  
represented by Foreign Secretary to Government  
Ministry of External Affairs  
68, College Road  
E.V.K. Sampath Maaligai  
VII Floor, Nungambakkam  
Chennai  
Tamil Nadu 600 006
- 2 Union of India  
represented by Secretary to Government  
Ministry of Home Affairs  
Internal Security - II Division & Legal Cell  
II Floor, Major Dhyan Chand National Stadium  
India Gate  
New Delhi 110 001
- 3 The State of Tamil Nadu  
represented by the Commissioner of Police  
Chennai, Tamil Nadu
- 4 The Inspector of Police  
J7, Velachery Police Station (Law & Order)  
Velacherry, Chennai 600 042
- 5 K. Vijay Rajesh Kumar  
S/o Kaliappan  
permanently residing at  
No.12, V Cross Street  
Nethaji Colony  
Velachery  
Chennai 600 042



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Temporarily residing at  
15652, Garrett Dr. Apple Valley  
MN 55124  
United States of America  
Email: itz4vj@gmail.com  
vijay.rk83@gmail.com

Respondents

Petition filed under Article 226 of the Constitution of India seeking a writ of habeas corpus directing the respondents 1 to 5 to produce the petitioner's twin daughters, viz., Arumantha S. Vijay and Prithyanka A. Vijay, aged about 7 years before this Court and set them at liberty or produce their bodies.

For petitioner Mr. V. Ramamurthy  
for Ms. D. Kamatchi

For RR 1 & 2 No appearance

For RR 3 & 4 Mr. R. Muniyapparaj  
Govt. Advocate (Crl. Side)

For R5 Mr. V. Vijay Shankar

ORDER

P.N. PRAKASH, J.

For the sake of convenience, the parties are referred to by their names.

2 The facts that are germane for deciding this habeas corpus petition are as under:

2.1 Vijay Rajesh Kumar (for short "Vijay") and Yazhini got married on 03.07.2011 in Thanjavur, Tamil Nadu and thereafter, went to the U.S. where through the wedlock, Yazhini begot a pair of female twins, viz., Arumantha and Prithyanka, who are now aged about 7 years and are American citizens by birth.

2.2 The couple returned to India with their children and on account of marital discord, they got estranged. Yazhini filed H.M.O.P. No.1286 of 2019 in the Famil Court, Chennai for divorce and Vijay also filed a petition in H.M.O.P. No.24 of 2019 in the Sub Court, Thanjavur for divorce.

2.3 According to Yazhini, sometime in 2019, she gave the custody of the female twins to Vijay and thereafter, she filed a petition for guardianship in G.W.O.P. No.335 of 2019 in the Original Side of the Madras High Court.



2.4 During the pendency of the above litigations, Yazhini filed a habeas corpus petition in H.C.P. No.1019 of 2019 in this Court seeking custody of the twins on the allegation that Vijay has located them in an undisclosed destination.

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2.5 During the hearing of H.C.P. No.1019 of 2019, Yazhini and Vijay were referred to the Mediation and Conciliation Centre and before the Mediators, they entered into an agreement dated 17.06.2019 in which paragraph 6.A. reads as under:

"A. The 3<sup>rd</sup> respondent/father gave social security number, passport copy and application submitted to the US Embassy in respect of twin daughters. Hence, the petitioner/mother gave consent and signed in the consent form for renewal and signed in the consent form for renewal of the passport of the twin daughters. The father/3<sup>rd</sup> respondent will not take away the children out of India or to any foreign countries without the written consent of the mother/petitioner."

2.6 The mediation report was forwarded to the Court and during the hearing of H.C.P. No.1019 of 2019, Vijay took exception to the aforesaid clause under the mediation agreement and wanted it to be eschewed. However, the Division Bench ignored his protest and closed H.C.P. No.1019 of 2019 vide order dated 19.06.2019 observing as under:

"3. The learned counsel for the 3rd respondent has submitted that there is a hitch in respect of one of the clauses though agreed upon with regard to taking his children abroad which requires consent from the petitioner.

4. We do not propose to say anything on this. If the parties are of the view that the agreed terms would require modification, the remedy lies elsewhere. Suffice it to state that there is no illegal detention of children involved and, at least, insofar as the petitioner is concerned, she has agreed to let the custody of the children with the 3rd respondent. This Habeas Corpus Petition is closed accordingly with the above observations."

2.7 When the guardianship proceedings in A.No.3226 of 2019 in G.W.O.P.No.335 of 2019 came up for hearing before a learned single Judge of this Court, Yazhini complained to the learned Judge that Vijay had taken the children to the U.S. in breach of the agreement dated 17.06.2019. She also stated that she had never agreed for the custody of the children with Vijay.





Vijay had breached the terms of the agreement by taking the children away to the U.S. The learned single Judge went into all the documents and passed the following order on 30.09.2020:

"The respondent has entered appearance and has filed counter and typed set of papers. This Court has perused the counter and has also looked into the documents that have been filed particularly the order of this Court in H.C.P(MD).No.1399 of 2018 dated 31.10.2018. In the light of the above, this Court feels that as a first step it would suffice if the mother makes a Video Call with the daughters every weekend."

2.10 In this background, Yazhini has filed the present habeas corpus petition impleading the Union of India and seeking the production of her two children here.

3 Heard Mr. V. Ramamurthy, learned counsel representing Ms.D.Kamatchi, learned counsel on record for Yazhini, Mr. R. Muniyapparaj, learned Government Advocate (Crl. Side) appearing for respondents 3 and 4 and Mr. V. Vijay Shankar, learned counsel for Vijay.

4 Mr. Ramamurthy, learned counsel for Yazhini, placed strong reliance on the judgment in Ruchi Majoo vs. Sanjeev Majoo<sup>1</sup>, Jayanthi vs. The Commissioner of Police, Coimbatore<sup>2</sup>, Vivek Singh vs. Romani Singh<sup>3</sup>, Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others<sup>4</sup> and Srikanth vs. District Magistrate, Bijapur<sup>5</sup> and contended that a writ of habeas corpus will lie in such custody cases and therefore, a direction as prayed for should be issued.

5 Vijay has filed a detailed counter affidavit dated 22.06.2021, wherein, he has made very serious allegations with reasonably supporting materials touching upon the alleged affair of Yazhini with one J. Rathish. It appears from the averments in the said counter affidavit that Yazhini had gone missing in the year 2018. Vijay suspected that she was being illegally detained by Rathish who is a son of a political bigwig and therefore, Vijay lodged a police complaint, based on which, a case in Cr.No.8 of 2018 was registered by the Inspector of Police, A.W.P.S., Thanjavur against Rathish for the offences under Sections 366 and 497 IPC. Since the police were unable to secure Yazhini, Vijay filed a habeas corpus petition in H.C.P. No.1399 of 2018 before the Madurai Bench of Madras High Court, wherein, Rathish was shown as the third respondent. It may be relevant to extract the observation in the order dated

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1 (2011) 6 SCC 479

2 H.C.P.No.1696 of 2011 decided on 09.05.2012

3 (2017) 3 SCC 231

4 (2019) 7 SCC 42

5 (2007) 1 SCC (Cri.) 385



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21.10.2018 passed in H.C.P. (MD) No.1399 of 2018:

"We have spent extensive time with the parties. Both the petitioner and detainee are emotional. We also spent considerable time with respondent No.3. It appears that as against respondent No.3, a case in Cr.No.8 of 2018 has been registered by the All Women Police Station, Thanjavur for the offences under Sections 366 and 497 IPC. Section 366 IPC was subsequently deleted in view of the statement given by the detainee that she went out of the wedlock on her own volition. Therefore, what remains is Section 497 IPC which also gets extinguished in view of the decision of the Hon'ble Apex Court declaring the aforesaid Section as unconstitutional. Even otherwise, the aforesaid section has no credence before the respondent police, as for that private complaint alone will lie. Therefore, we direct respondent no.2 to close the FIR in Crime No.8 of 2018 within two weeks from the date of receipt of a copy of this order."

(emphasis supplied)

A reading of the above shows that Yazhini is said to have appeared before the police and has said that she went out of the wedlock on her own volition which resulted in the police deleting Section 366 IPC.

6 This Court gave its anxious consideration to the rival submissions.

7 At the outset, it is pertinent to state that Yazhini, in her affidavit running to 14 pages with 23 paragraphs, has not whispered a word about the H.C.P. proceedings before the Madurai Bench in H.C.P. (MD) No.1399 of 2018, about which, we have alluded to in paragraph 5, supra, for the reasons best known to her. Of course, she has quietly placed a copy of the order dated 31.10.2018 passed in H.C.P. No.1399 of 2018 in the voluminous typed set of papers, perhaps, to escape the charge of suppressio veri that Vijay would mount on her in this proceedings. In our opinion, in all fairness, when so much of dirty linen has been washed in those proceedings, Yazhini should have alluded to it in her affidavit in these proceedings, especially when she has taken care to mention about all the litigations betwixt her and Vijay.

8 In one breath, Yazhini herself has stated that she gave custody of the children to Vijay, but, of course with some explanations. Even before the filing of H.C.P. No.1019 of 2019, Yazhini has moved this Court on the Original Side in G.W.O.P. No.335 of 2019 for the custody of the children. While disposing of H.C.P. No.1019 of 2019 on 19.06.2019, this Court did not place reliance on the mediation agreement because it was



repudiated by Vijay and therefore, this Court merely held that the custody of the children with their father cannot be said to be illegal and on that short ground, closed the habeas corpus petition. Subsequently, before the single Judge, in G.W.O.P. No.335 of 2019, Yazhini disputed the observations of the Division Bench in the order dated 19.06.2019 passed in H.C.P.No.1019 of 2019 and therefore, she was directed to get appropriate clarification. The Division Bench refused to entertain her clarification plea and held that any pending petition will have to be decided on its own merits. When the same issue was raised before another single Judge in G.W.O.P. No.335 of 2019, there was no direction issued to Vijay to produce the children and contrarily, the learned Judge had permitted Yazhini to speak to the children through video call every week end. Had H.C.P. No.1019 of 2019 been ordered on the strength of the agreement dated 17.06.2019, then, the situation would have been a little different.

9 Coming to the judgments relied upon by Mr. Ramamurthy referred to above, they turn out on their own facts, which is not the position here. The children are admittedly American citizens and Yazhini had given their custody to Vijay and Vijay is stoutly contesting the guardianship proceedings which was instituted even before the filing of H.C.P. No.1019 of 2019. Yazhini has also not spoken a word about the earlier habeas corpus proceedings in H.C.P. (MD) No.1399 of 2018 in her affidavit.

10 In such perspective of the matter, this Court is of the view that this is not a fit case in which a writ of habeas corpus is required to be issued as prayed for by Yazhini.

In the result, this habeas corpus petition stands dismissed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cad  
To

1 The Foreign Secretary to Government  
Ministry of External Affairs, Union of India,  
68, College Road  
E.V.K. Sampath Maaligai  
VII Floor, Nungambakkam  
Chennai  
Tamil Nadu 600 006



2 The Secretary to Government  
Ministry of Home Affairs, Union of India,  
Internal Security - II Division & Legal Cell  
II Floor, Major Dhyan Chand National Stadium  
India Gate  
New Delhi 110 001

3      The Commissioner of Police  
Chennai, Tamil Nadu

4     The Inspector of Police  
J7, Velachery Police Station (Law & Order)  
Velacherry, Chennai 600 042

5     The Public Prosecutor  
High Court, Madras

+1cc to Ms. D.Kamatchi, Advocate, SR.No.33450

H.C.P. No.721 of 2021

PVS (CO)  
B.VC (06/08/2021)