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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.08.2021

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MS.JUSTICE R.N.MANJULA

H.C.P.NO.752 OF 2021

John Peter .. Petitioner
Vs.

1.The Deputy Commissioner of Police
St. Thomas Mount
Chennai-16

2.The Inspector of Police
St. Thomas Mount Police Station
St. Thomas Mount, Chennai-16

3.The Inspector of Police
St. Thomas Mount All Women Police Station
St. Thomas Mount, Chennai-16

4.R.Chandran .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus directing the 2nd respondent to produce the petitioner's minor son namely Jeshurun, S/o.I.Johnpeter, aged about 3 years and 11 months before this Court from the custody of the 4th respondent and hand over to the petitioner.

For Petitioner : Mr.S.Saravanakumar
For R1 to R3 : Mr.R.Muniyapparaj
Govt. Advocate (Crl. Side)

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

On 19.07.2021, we passed the following order :

"It is the case of the petitioner that he got married to one Rasiga, on 29.08.2016 and he begot a son viz., Jeshurun, who was born on 21.05.2017.



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Unfortunately, Rasiga died immediately after delivery, due to pancreatitis complications. It is his further case that, his son Jeshurun, is in the illegal custody of the 4th respondent [father of the deceased Rasiga] and therefore, he has filed the present Habeas Corpus Petition.

2. On notice, R.Chandran [4th respondent] appeared before this Court with the child and a detailed counter dated 08.07.2021 has been filed. Learned counsel for the petitioner strongly repudiated the allegations made in the counter affidavit and stated that, they are false.

3. Learned counsel for the 4th respondent submitted that, after the death of Rasiga, the petitioner got remarried to one Dorothy Divya, on 23.01.2020. It is the contention of the learned counsel for the 4th respondent that, after the death of Rasiga, the child was being brought by the 4th respondent and he has now put the child in a nearby School where the child is studying in L.K.G.

4. However, this Court cannot go into the allegations that have been made in the counter affidavit of the 4th respondent, as they are disputed questions of fact, which cannot go into these proceedings. However, para 12 of the counter affidavit filed by the learned counsel for the 4th respondent, he has stated as follows :

"12. ... The petitioner is at will to resume his visit to my residence to be with his son and we have no objections for the same."

5. We are of the view that it will be in the interests of justice, if visitation rights are granted to the petitioner as an ad interim measure, so that, the child does not forget his father nor the father forget his son. Therefore, we grant permission to the petitioner to collect the child from the custody of the 4th respondent at 9.00 a.m. on every Saturday and drop him back at 5.00 p.m. on the immediate succeeding Sunday, as an ad interim measure, until further orders passed by this Court. Both sides agreed to this proposal.

6. The 4th respondent shall not obstruct or cause any hindrance to this. If the petitioner face any difficulty or if there is any obstruction by the 4th respondent, it is open to the petitioner to approach the 3rd respondent police, who shall ensure that the order passed by this Court is implemented in letter and spirit.

Adjourned to 31.08.2021."



2. It appears that the petitioner has been availing of the direction issued by us and has been taking the child in the weekends and dropping him back. In the peculiar facts and circumstances of this case, it cannot be stated that the child is in the illegal custody of the 4th respondent per se for the issuance of a writ of habeas corpus.

3. In view of the above, this petition is closed with liberty to the petitioner to work out his remedies before the appropriate forum for the custody of the child. Until then, the visitation rights granted by this Court vide order dated 19.07.2021 shall continue. It is open to the appropriate Court to modify the order dated 19.07.2021 passed by us in the paramount interest of the child.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner of Police
St. Thomas Mount
Chennai-16

2.The Inspector of Police
St. Thomas Mount Police Station
St. Thomas Mount, Chennai-16

3.The Inspector of Police
St. Thomas Mount All Women Police Station
St. Thomas Mount, Chennai-16

4.The Public Prosecutor
High Court, Madras

H.C.P.No.752 of 2021

KSM(CO)
PM/22/09/2021