



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Ms. Justice R.N.MANJULA

H.C.P.No.1290 of 2021

Venkadesh

... Petitioner

Vs.

1. The Commissioner of Police,
O/o.The Commissioner of Police,
Coimbatore City.

2. The Inspector of Police,
Saravanapatti Police Station,
Coimbatore.

3. Mariyalaya Kulanthaigal Ilam,
Represented by its
Authorized Person,
Palladam, Coimbatore District.

4. Selvarani

5. Chithirai vel

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the 1st and 2nd respondents to produce the petitioner's minor daughter viz., Dharani Sri, D/o.Vengadesh, aged about 9 years, before this Court from the custody of the 3rd respondent and hand over her custody to the petitioner.

For Petitioner : Mr.K.Navaneetharaja

For RR 1 and 2 : Mr.R.Muniyapparaj
Govt.Advocate (Crl.Side)



ORDER
[Made by P.N.PRAKASH, J.]

WEB COPY This habeas corpus petition has been filed seeking to direct the 1st and 2nd respondents to produce the petitioner's minor daughter viz., Dharani Sri, D/o.Vengadesh, aged about 9 years, before this Court from the custody of the 3rd respondent and hand over her custody to the petitioner.

2. For the sake of convenience, the parties will be referred to by their name.

3. Venkadesh, a Police Constable, fell in love with Selvarani, fourth respondent herein, who is also a Women Police Constable and they got married on 29.12.2005. They were blessed with two children viz., Roobesh Ganapathi (D.O.B.15.09.2007) and Dharani Sri (D.O.B.25.10.2012). Their marriage ran into rough weather resulting in the spouses filing a petition for divorce by mutual consent in H.M.O.P.No.50 of 2018 in the Family Court, Madurai, in which, a decree of divorce was passed on 21.08.2018, under which, the custody of Roobesh Ganapathi was given to Venkadesh and custody of Dharani Sri was given to Selvarani. After divorce Venkadesh got married to one Jayalakshmi, through whom, he has a daughter. Similarly Selvarani also got married to Chithirai vel @ Chithiraisamy, fourth respondent herein.

4. While that being so, Dharani Sri yearned to see her brother Roobesh Ganapathi and therefore, Roobesh Ganapathi was sent to the house of Selvarani in Coimbatore, where she was posted. Roobesh Ganapathi was admitted in VIII Standard in the Government School, Pappanaickenpalayam, Coimbatore. It appears that Selvarani's husband Chithirai vel had subjected the children to torture and therefore, Roobesh Ganapathi contacted the Child Helpline (1098) and on their intervention, Roobesh Ganapathi was sent to Don Bosco Anbu Illam, Coimbatore and Dharani Sri was sent to Mariyalaya Rehabilitation Home in Palladam. Subsequently, custody of Roobesh Ganapathi was given by the Child Welfare Committee (CWC), Coimbatore, to Venkadesh and since then, Roobesh Ganapathi is with Venkadesh.

5. Under such circumstances, Venkadesh has filed the present habeas corpus petition for the custody of Dharani Sri, alleging that Dharani Sri is in the illegal custody of Selvarani and Chithirai vel.

6. On 25.08.2021, we directed the Inspector of Police, Central All Women Police Station, Coimbatore, to produce Selvarani and Dharani Sri before us and also directed Venkadesh to be present before us along with his son Roobesh Ganapathi,



today.

7. Accordingly, E.Nirmala, Inspector of Police, Central All Women Police Station, Coimbatore, produced Selvarani and Dharani Sri. Venkadesh and Roobesh Ganapathi were also present.

8. On perusal of the records, we find that on a complaint received by the CWC, Coimbatore, through the Child Helpline, Dharani Sri was admitted in Mariyalaya Rehabilitation Home, Coimbatore. Thereafter, on the application made by Selvarani before the CWC, Coimbatore, enquiry was conducted and by order dated 04.08.2021, custody of Dharani Sri was handed over to Selvarani.

9. We enquired the children individually and observed that Dharani Sri was not willing to go with Venkadesh, but, expressed her desire to be with her mother Selvarani. However, Roobesh Ganapathi made certain allegations against Selvarani and stated that he would remain with his father Venkadesh.

10. It is trite that custody of a child with its mother is not illegal per se for the issuance of a writ of habeas corpus, since mother being a natural guardian. However, the interest of the child is paramount and therefore, we will leave it open to the parties to approach the appropriate Court for custody and guardianship, if so advised.

With the above observation, this habeas corpus petition stands closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

nsd/tri

To

1. The Commissioner of Police,
O/o.The Commissioner of Police,
Coimbatore City.



2. The Inspector of Police,
Saravanapatti Police Station,
Coimbatore.

3. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

H.C.P.No.1290 of 2021

PL (CO)
SU (22/09/2021)