

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

Coram

The Hon'ble Mr. Justice P.N.PRAKASH
and
The Hon'ble Mr. Justice V.SIVAGNANAM

H.C.P. No. 2328 of 2020

G.Kumar

.. Petitioner

Vs.

1.The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery, Chennai - 600 007.

2.The Inspector of Police,
S6, Shankar Nagar Police Station,
Pammal, Chennai - 600 075.

3.G.Jayachandiran

4.Gopal

5.G.Jaya

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus directing the second respondent herein to produce his minor granddaughter Jayavarshini, aged about 7 years and grandson Krishanth, aged about 4 years, from the illegal custody of respondents 3 to 5 and handover to the custody of the petitioner.

For Petitioner : Mr.N.E.Athipan Raj

For Respondents: Mr.R.Prathap Kumar,
Addl. Public Prosecutor for R1 & R2

Mr.P.K.Ganesh for R3 to R5

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ORDER

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

Seeking a direction to the second respondent herein to produce the granddaughter Jayavarshini, aged about 7 years and grandson Krishanth, aged about 4 years, from the illegal custody of respondents 3 to 5 and to handover their custody to the petitioner, the present habeas corpus petition has been filed.

2.It is the case of the petitioner that his daughter Divya got married Jayachandiran on 01.06.2012 and through the wedlock they have two children, Jayavarshini, aged about 7 years and Krishanth, aged about 4 years. Dhivya committed suicide on 20.09.2020 by hanging, in connection with which, the police have registered a case in Crime No.956 of 2020 for the offence under Section 306 IPC against Jayachandiran and the investigation is pending. While that being so, this habeas corpus petition has been filed by the petitioner for the custody of the grandchildren on the ground that they were earlier living with him and that it will be prejudicial to their interest if they continue to remain with their father, who is the accused in Crime No.956 of 2020. In support of this contention, learned counsel placed reliance upon the judgments in (i)Tejaswini Gaud and Others Vs. Shekhar Jagdish Prasad Tewari and Others ((2019) 7 SCC 42) and (ii)Shaurya Gautam and Another Vs. State of U.P. and Others (2020 SCC Online All 1372).

3.The fact remains that Jayachandiran is the father of two children and at present, the custody of the children is with him. In Tejaswini's case (cited supra), the Supreme Court handed over the custody of the child from the aunt of the child to the father holding that the father being the natural guardian would be entitled to custody. However, the Supreme Court has stated that in matters of custody, the paramount interest of the child should be taken into account by the Court. In this case, the custody of the two children with Jayachandiran cannot be stated to be illegal inasmuch as he is the father and natural guardian.

4.Hence this habeas corpus petition is closed with liberty to the petitioner to work out the remedy in the manner known to law.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1.The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery, Chennai - 600 007.

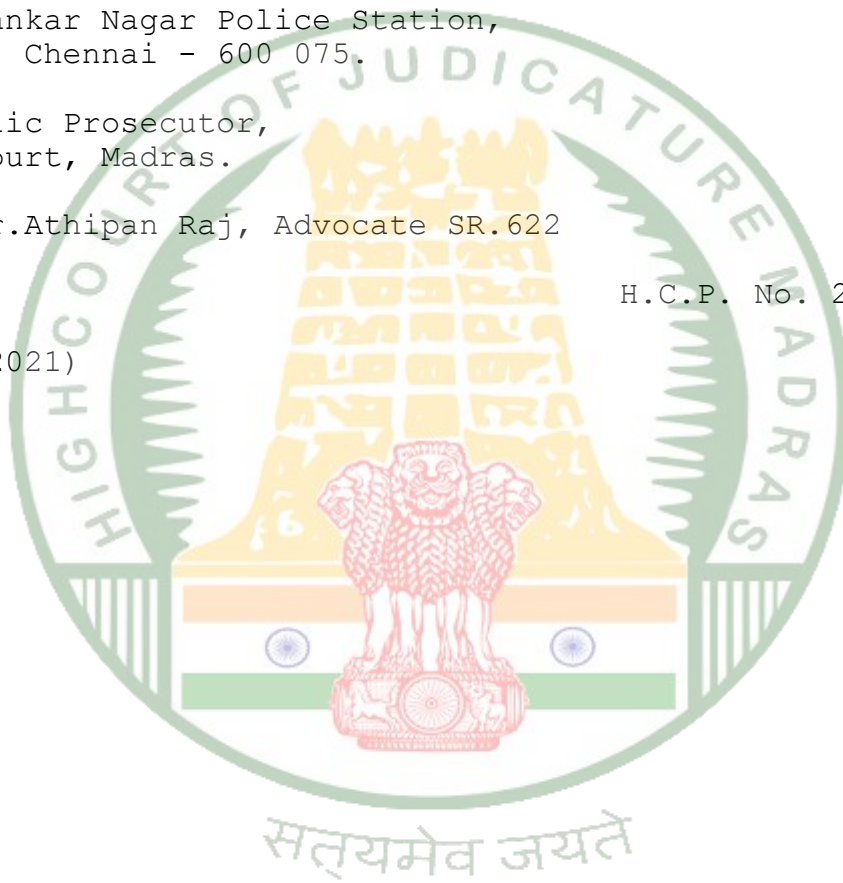
2.The Inspector of Police,
S6, Shankar Nagar Police Station,
Pammal, Chennai - 600 075.

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.Athipan Raj, Advocate SR.622

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