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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 26.11.2021

DELIVERED ON: 08.12.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

H.C.P.No.1532 of 2021

Andrew

... Petitioner

Vs.

1.The Commissioner of Police
Salem City
Salem 636 006

2.The State
Rep. by Inspector of Police
Hasthampatty
Salem 636 006

3.Merlin Beninga Selvaraj

... 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 two female minor children viz., Jessica (Passport Republic of Singapore No.E2665265L) and Jenita (Passport Republic of Singapore No.E5002956C) born on 06.08.2005, aged about 15½ years and 14.11.2008, aged about 12 years 2 months, respectively before this Court from the illegal custody of the 3rd respondent and handover to the petitioner.

For Mr.K.Jayabalan
Petitioner

For R1 and R2 Mr.R.Muniyapparaj
Additional Public
Prosecutor

For R3 Mr.V.Vargees Amal Raja



O R D E R

P.N.PRAKASH, J.

For the sake of convenience, the petitioner and the 3rd respondent will be referred to by their first names viz., Andrew and Merlin, respectively.

2. Andrew, in his affidavit that has been filed in support of the present Habeas Corpus Petition, has stated the following facts :

- i. He is a Singapore citizen and he got married to Merlin on 24.05.2004 at the CSI Immanuel Church, Hasthampatty, Salem.
- ii. After marriage, Merlin joined him in Singapore and acquired Singapore citizenship. Their daughters viz., Jessica and Jenita were born in Singapore on 06.08.2005 and 14.11.2008 respectively, on account of which, they are also Singapore citizens.
- iii. On account of marital discord, he got estranged from Merlin and on 16.01.2017, a final judgment of divorce was granted by the Family Justice Courts of the Republic of Singapore, dissolving his marriage with Merlin.
- iv. He filed an application for custody of his daughters in the Family Justice Courts of the Republic of Singapore, in which, an order was passed on 07.07.2016, granting interim custody, care and control of the two children viz., Jessica and Jenita, to him.
- v. Subsequently, by an order dated 11.01.2017, the said Court granted complete custody, care and control of the two children.
- vi. Alleging that Merlin had not complied with the custody order, he initiated contempt proceedings against her, in which, the Family Justice Courts of the Republic of Singapore, by order dated 05.08.2020, convicted Merlin and directed her to pay a fine of SGD 1,000.00 and costs of SGD 2,500.00.

3. Armed with the aforementioned orders and placing reliance on the judgment of the Supreme Court in Yashita Sahu Vs. State of Rajasthan and Others [(2020) 3 SCC 67], Andrew has filed the



present habeas corpus petition seeking custody of his two children viz., Jessica and Jenita.

4. On notice, Merlin appeared before us on 01.10.2021 with her two children viz., Jessica and Jenita.

5. On 01.10.2021, this Court passed the following order :
"Today, Mr.Chandrasekaran, Special Sub-Inspector of Police, Hasthampatty Police Station, Salem is present before this Court.

2. Andrew, the petitioner, his mother Mary Michael, Merlin Beningna Selvaraj, the 3rd respondent and the children viz., Jessica Andrew, Jenita Andrew were also present before this Court.

3. We allowed Andrew free access to the children in the mediation room, after which, when we interviewed the children, they clearly stated that they are not willing to go with their father Andrew. Jessica is in 10th standard and Jenita is in 8th standard in Velammal Vidyashram, Guduvanchery. They appear to be well informed and decisive and we do not find them to have been tutored by their mother Merlin. Since, Mr.S.Ashik Ahamed, Advocate (E.No.460/2017) undertook to file valakat for Merlin, a copy of the petition, affidavit and typed set of papers were furnished to him.

For filing counter affidavit, post on 08.10.2021."

6. Thus, as stated in the order dated 01.10.2021 extracted above, since Jessica and Jenita made it clear to this Court that they do not want to go with their father and that they want their mother to be in India, we adjourned this case from 01.10.2021 to 08.10.2021. On 08.10.2021, we passed the following order :

"Today, Mr.Andrew, the petitioner, his mother Mary Michael, Merlin Beningna Selvaraj, the 3rd respondent and the children viz., Jessica Andrew, Jenita Andrew were present before this Court.

2. Merlin Beningna has filed her counter affidavit, a copy of which has been served on the learned counsel for Andrew. The learned counsel for Merlin Beningna informed this Court that her mother-



3. For further proceedings, adjourned to 29.10.2021. The parties need not be present."

8. Thus, Merlin, in her counter affidavit, has chronologically stated the events that had taken place earlier and also about the torture she had undergone at the hands of Andrew's mother in Singapore. She has further stated that Andrew filed a suit in O.S.No.1715 of 2015 in the Sub Court, Coimbatore, for partition of the properties that were purchased by them in Coimbatore.

<https://hcservices.ecourts.gov.in/hcservices/>



on 16.02.2017 and that marriage also has been dissolved vide order dated 17.01.2018 passed by the Family Justice Courts of the Republic of Singapore, as could be seen from the said order.

10. Suppressing all these facts, Andrew has filed the present habeas corpus petition, which deserves to be dismissed with exemplary costs. The judgment of the Supreme Court in Yashita Sahu (supra), will not apply to this case because, in that case, after passing of the order by the foreign Court, the wife had left the United States and had come to India. In this case, the children were in India since 2015. While they were in India, Andrew filed a petition for custody in the Singapore Court and obtained ex parte orders on 07.07.2016 and 11.01.2017 in the custody case and on 05.08.2020 in the contempt proceedings.

11. It is seen that on the instructions of Andrew, his Advocate Mr. Jayabalan, has made an application under the Right to Information Act, 2005, to the Principal, Velammal Vidhyashram, where Jessica and Jenita are studying, asking for certain information about them. This, in our opinion is indeed distressing. Velammal Vidhyashram is a private school and they are not bound to give information under the RTI Act, which Mr. Jayabalan, as an Advocate should have been aware of, before issuing such a notice on 16.09.2020. This is clearly tantamount to harassing Merlin and the children.

12. Of course, Andrew in his affidavit, has stated that he had earlier filed H.C.P.No.468 of 2018 for custody of the two children, but, it was dismissed for default on 27.03.2018, as there was no representation for him, when the matter was taken up for hearing by this Court. We perused the said order, in which this Court has held as under :

"3. Today, respondent has produced the minor children of the petitioner viz., Jessica and Jenita as also their mother. In our interaction with them, we find that the children are most comfortable in the care and custody of their mother and she too is doing her very best towards their welfare. The matter has been listed today under the special list. Consequent thereto the respondent has produced both mother and children before this Court. There is no representation for petitioner. In circumstance where the petitioner has not chosen to make his wife a party to the proceedings and sought production and accordingly, this Habeas Corpus Petition shall stand dismissed. It is for the petitioner to workout his



right, if any, before appropriate Civil forum.”
Thus, H.C.P.No.468 of 2018 was not a case of dismissal for default simplicitor. The children appeared before the Court. They were interviewed by the Court and the Court returned a finding that the children are being well taken care of by their mother. In all fairness, Andrew should have placed a copy of this order which is available in the High Court website in his typed set of papers, which he miserably failed to do for obvious reasons. In the divorce order dated 16.01.2017, Andrew's Singapore national registration number has been given as NRIC No.S7443606D and the same number figures in the divorce order dated 17.01.2018, issued by the Singapore Court relating to Priscilla Aruna Richard.

For all the aforesaid reasons, this Habeas Corpus Petition is dismissed with exemplary costs of Rs.5,00,000/- (Rupees Five Lakhs only) payable by Andrew to Merlin and the two children within a period of eight weeks from the date of receipt of a copy of this order.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

gya

To

1.The Commissioner of Police,
Salem City,
Salem 636 006.

2.The Inspector of Police,
Hasthampatty,
Salem 636 006.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Jayabalan, Advocate Sr.61659

+2cc to M/s.V.Vargees Amal Raja, Advocate Sr.64727

H.C.P.No.1532 of 2021

svI[co]
srg 16/12/2021