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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2021

CORAM

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

H.C.P.Nos.1868 & 1892 of 2021

H.C.P. NO. 1868 of 2021

S. Saranya

..Petitioner

Vs.

1. The Commissioner of Police,
Salem City, Salem.
2. The Inspector of Police,
All Women Police Station,
Ammapettai, Salem City.
3. R. Sathya
4. The Chairman,
Child Welfare Committee,
Don Bosco Anbu Illam,
230, Bretts Road, Mulluvadi Gate,
Salem 636 007.

..Respondents

H.C.P. NO.1892 OF 2021

R. Sathya

..Petitioner

Vs.

1. The Commissioner of Police,
Salem City, Salem.
2. The Inspector of Police,
All Women Police Station,
Ammapettai, Salem City.
3. S. Saranya
4. T. Sivakumar
5. M. Eswari



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6. Life Line Trust, Reception home (Girls)
Rep. by its Trustee
No.50/2, Ram Nagar,
Kumarasampatti, Salem 636 008

..Respondents

PRAYER IN H.C.P.No. 1868 of 2021

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS directing the 2nd respondent herein to secure the detainee namely Minor Abi, D/o. T.Shivakumar aged about 11 years who is under unlawful custody of 4th respondent and produce her before this Hon'ble Court and handover to the petitioner.

PRAYER IN H.C.P.No. 1892 of 2021

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS directing the Inspector of Police, Ammapettai Police Station, the 2nd respondent herein, to produce the petitioner's minor child Abi, aged 10 years, before this Hon'ble Court from the illegal custody of the respondents 3 to 6 and hand over to the petitioner.

H.C.P. No.1868 of 2021

For Petitioner : Mr. R. Nalliyappan

For Respondents : Mr. Muniyapparaj
Additional Public Prosecutor for R1 & R2

Mr. A.V. Arun for R3

H.C.P. No.1892 of 2021

For Petitioner : Mr. A.V. Arun

For Respondents : Mr. Muniyapparaj
Additional Public Prosecutor for R1 & R2

Mr. R. Nalliyappan for R3 & R4



COMMON ORDER

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

These habeas corpus petitions have been filed seeking a direction as stated in the respective prayer.

2. On 23.11.2021, we passed the following order:

"For the sake of convenience, the parties will be referred to by their respective names.

2. Sathya and Sivakumar are siblings and their father is one Thiagarajan. Sivakumar got married to Saranya and Sathya was given in marriage to Ramesh. Both families were living in Salem.

3. The Sathya-Ramesh couple was childless for a long time. However, the Saranya-Sivakumar couple was lucky to have three children viz., Kavya (11 years), Abi (10 years) and Oviya (5 years). Since the Sathya-Ramesh couple was childless, Abi was given in adoption to them, when she was hardly 3½ months old, sometime in the year 2012. Since then, Abi was being brought up by the Sathya-Ramesh couple and the Saranya-Sivakumar couple was bringing up Kavya and Oviya. While so, Ramesh died of cancer on 19.06.2019, post which, the relationship between Ramesh's family and Sivakumar's family soured.

4. Alleging that Sathya is not permitting the Saranya-Sivakumar couple free access to Abi, Saranya gave a complaint dated 27.10.2021 to the Commissioner of Police, Salem, who in turn, forwarded the petition to the Inspector of Police, AWPS, Ammapet, for enquiry. In the said complaint, Saranya has not only stated the aforesaid facts, but, has also made certain allegations against Sathya, just for giving a criminal colour to a purely civil dispute.

5. Strangely, the Inspector of Police, Ammapet AWPS registered a petition enquiry in C.S.R.No.541 of 2021, conducted enquiry, brought both the sides to the police station and informed the Child Welfare Committee (CWC), Salem. The CWC, Salem, by a reception order dated 27.10.2021, admitted Abi in Government Lifeline Trust, Reception Home, Salem. Thus, the CWC successfully took away the custody of the child, which was normally growing in the family of the adopted parents and branded it as a child in need of care and protection and handed the child over to the Lifeline Trust, by a mere reception order, without any reasons in support thereof.



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10. After Abi was lodged in the said reception home, she became distraught and started asking for help via social media. When this issue came to the notice of one of us (PNPJ), who is the Chairman of the Juvenile Justice Committee of the High Court and was incidentally one of the portfolio Judges for Salem District, he (PNPJ) orally directed the Juvenile Justice Board Magistrate, Salem, to find out, under what circumstances, Abi has been lodged in the said Home. The learned Magistrate visited the Home and informed the portfolio Judge (PNPJ) that Abi has been lodged in the Home, based on the orders of the CWC dated 27.10.2021 and 15.11.2021 and not on the orders of the police.

11. Though an appeal remedy is provided under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015, against the order of the CWC dated 15.11.2021, on facts, we find that the police and the CWC had acted beyond the scope of the said Act, by mechanically lodging Abi in the said Home. Abi is not an orphaned child, who is in need of care and protection. On the contrary, she has two mothers viz., Saranya and Sathya, who are fighting with each other to give her care and protection. This is a matter which should not have been brought to the police station at all.

12. In our opinion, the removal of the child by the CWC from the custody of Sathya based on the police complaint of Saranya, lodging of the child by the CWC in the said Home and thereafter, handing over the custody of the child to Saranya, are clearly illegal.

13. Therefore, in exercise of our powers under Sections 226 and 227 of the Constitution of India, we hereby set aside the order dated 15.11.2021 that has been passed by the CWC, Salem and we hand over Abi to Sathya. Sathya shall permit Sivakumar, Saranya and their children, to have free access to Abi, during weekends. However, Sivakumar and Saranya shall not take custody of Abi from Sathya.

14. We place on record our deep appreciation to Ms. Ratna Thara, Mediator, for deftly handling this sensitive case.

For further proceedings, post on 21.12.2021."

3. When the matter was taken up for hearing today, the counsel for Saranya (petitioner in H.C.P. No.1868 of 2021) submitted that Satya (petitioner in H.C.P. No.1892 of 2021) is



not giving free access to meet the child and that she is always present at the time of visitation. In our opinion, these things cannot be decided in a habeas corpus petition.

With the above direction, these Habeas Corpus Petitions stand closed in terms of the order dated 23.11.2021.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police,
Salem City, Salem.
2. The Inspector of Police,
All Women Police Station,
Ammapettai, Salem City.
3. The Chairman,
Child Welfare Committee,
Don Bosco Anbu Illam,
230, Bretts Road, Mulluvadi Gate,
Salem 636 007.
4. The Trustee
Life Line Trust, Reception home (Girls)
No.50/2, Ram Nagar,
Kumarasampatti, Salem 636 008
5. The Public Prosecutor
High Court, Madras

+2ccs to Mr.A.V.Arun, Advocate SR. Nos.68732 & 68733

+1cc to Mr.R.Nalliyappan, Advocate SR. No. 68558

H.C.P.Nos.1868 & 1892 of 2021

GSM (CO)

PR (10/01/2022)