



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE G.ILANGO VAN
H.C.P. (MD) No.804 of 2021

R.Panchavarnam

... Petitioner/
Mother of the detenue

-vs-

1.The Superintendent of Police,
O/o. the Superintendent of Police,
Velu Nachiyar Complex,
Dindigul District.

2.The Inspector of Police,
All Women Police Station,
Kodaikanal,
Dindigul District.

3.M.Vijay ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the petitioner's minor daughter namely, V.Innanya, aged about three years, before this Court and hand over the custody of the minor child to the petitioner.

For Petitioner: Mr.J.Pandi Dorai

For R1 and R2 : Mr.S.Ravi
Standing Counsel for Tamil Nadu Government

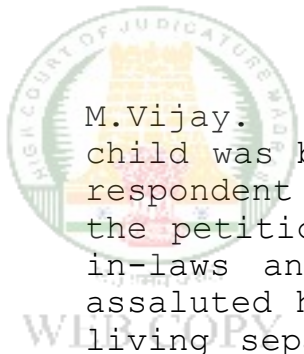
For R3 : Mr.Rangeshkanna

O R D E R

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The prayer in this Habeas Corpus Petition is to direct the respondents 1 and 2 to produce the petitioner's minor daughter viz., V.Innanya, aged about three years, before this Court and hand over her custody to the petitioner.

2.The petitioner is the wife of the third respondent viz.,
<https://hcservices.ecourts.gov.in/hcservices/>



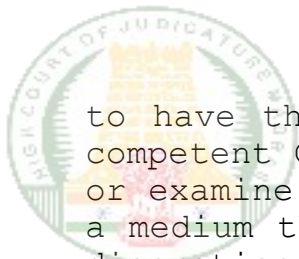
M.Vijay. The marriage was performed on 04.12.2016 and the minor child was born to them on 17.12.2017. It is alleged that the third respondent is a M.C.A. Graduate and he is working in abroad. Citing the petitioner's educational qualification, viz., 12th Standard, her in-laws and the third respondent ill-treated and also physically assaulted her. The petitioner would claim that since 2019 they are living separately and the detinue is under her care and custody. While so, it is alleged by the petitioner that, on 24.03.2021 the third respondent along with her in-laws forcibly entered into the house of the petitioner and taken away the detinue. Hence, she lodged a complaint with the respondents 1 and 2 on 09.04.2021. But, no appropriate steps were taken to secure the detinue. Hence, the present Habeas Corpus Petition.

3.Mr.J.Pandi Dorai, learned counsel appearing for the petitioner while reiterating the averments contained in the affidavit filed in support of this petition, has relied on the order passed by this Court in **H.C.P.(MD)No.1185 of 2019, dated 11.11.2019 [S.Pandiselvi Vs. The Commissioner of Police, Madurai and others]** in support of his contentions. He would submit that while deciding the matter of custody of child, "primary and paramount consideration is always the welfare of the child" and "if the welfare of the child so demands, then technical objections cannot come in the way.

4.Per contra, Mr.Rangesh Kanna, learned counsel appearing for the third respondent would submit that the present Habeas Corpus Petition is not at all maintainable and the remedy open to the petitioner is to approach the Civil Court. He would further submit that the third respondent is the natural guardian of the detinue and he has filed H.M.O.P.No.54 of 2021 before the Sub-Court, Sankagiri, for restitution of conjugal rights and the same is pending. He would also submit that the allegations and counter allegations of the parties cannot be gone into in a Writ proceedings and it can be decided only by the Civil Court after evaluating the evidence produced by the parties.

5.We have heard Mr.S.Ravi, learned Standing Counsel appearing for the State.

6.In the case on hand, as pointed out earlier, the relationship of the parties is not disputed. Admittedly, the third respondent has filed H.M.O.P.No.54 of 2021 before the Sub-Court, Sankagiri, for restitution of conjugal rights. The learned counsel appearing for the third respondent has also submitted that the third respondent is always ready for re-union with the petitioner. It is the submission of the learned counsel appearing for the petitioner that even in the last hearing, the petitioner has expressed her unwillingness to live with the third respondent and she is only interested in the custody of the minor child / detinue.



to have the custody of the minor child can be decided only by the competent Civil Court. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law and only in extraordinary circumstances, the Habeas Corpus Petition can be entertained.

8. In the present case on hand, no extraordinary circumstances have been shown by the petitioner to entertain the Habeas Corpus Petition and hence, we are not inclined to go into the merits of the matter except directing the petitioner to approach the Civil Court to have the custody of the minor child. Accordingly, this Habeas Corpus Petition is disposed of.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Superintendent of Police,
O/o. the Superintendent of Police,
Velu Nachiyar Complex,
Dindigul District.

2. The Inspector of Police,
All Women Police Station,
Kodaikanal,
Dindigul District.

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



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.PANDIDURAI, Advocate (SR-19093[F] dated 09/06/2021)

H.C.P. (MD) No.804 of 2021
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KK(21.06.2021) 4P 5C