



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

H.C.P. (MD)No.1410 of 2021

S.Ramprasath ... Petitioner/Father of the detenue
vs.

1.The Commissioner of Police
Madurai City.

2.The Superintendent of Police,
Office of the Superintendent of Police,
Chengalpattu,
Chengalpattu District.

3.The Inspector of Police,
All Women Police Station,
Thallakulam,
Madurai City.

4.The Inspector of Police,
Kelambakam Police Station,
Kelambakam,
Chengalpattu District.

5.B.Nithya ... Respondents

PRAYER : Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Habeas Corpus, to direct the 1st to 4th respondents to produce the petitioner's daughter by name Agathya S/o.Ramprasath aged about 6 years before this court and hand over the custody to the petitioner.

For Petitioner : Mr.C.M.Arumugam

For R1-R4 : Mr.S. Ravi
Additional Public Prosecutor

For R5 : Mr.Balamurugan



O R D E R

(Order of the Court was made by V.BHARATHIDASAN, J.)

Alleging that the petitioner's daughter, by name, Agathya, aged about 6 years, has forcibly taken by the 5th respondent herein, who is none other than the wife of the petitioner, the present Habeas Corpus Petition has been filed.

2. Mr.C.M.Arumugam, the learned counsel appearing for the petitioner submitted that earlier, the petitioner has filed a petition in G.W.O.P.No.15 of 2018, before the Family Court, Madurai, seeking custody of the minor daughter and an ex-parte decree was granted in his favour, vide order dated 16.07.2021, despite the decree, the 5th respondent is not handing over the child to the petitioner and did not permitting the petitioner to meet the child. Hence, the present Habeas Corpus Petition has been filed.

3. Mr.Balamurugan, the learned counsel appearing for the 5th respondent would submit that now, as against ex-parte decree passed, the 5th respondent, has filed a petition to set aside the ex-parte decree. Notice is also served on the counsel appearing for the husband. Since the child is in the custody of the mother, it cannot be termed as illegal custody and the Habeas Corpus Petition is not maintainable.

4. We have considered the rival submissions.

5. Admittedly, now the child is in the custody of mother. Even though ex-parte decree was granted in favour of the petitioner by the custody court, now it is stated that a petition to set aside the ex-parte decree is filed and the same is pending.

6. Considering the fact that the child is in the custody of the mother, it cannot be construed as illegal custody. If at all the decree passed for the custody is violated, it is open to the petitioner to workout his remedy in the manner known to law, and for that he cannot maintain this Habeas Corpus Petition.

7. In the result, this Habeas Corpus Petition is dismissed.

Sd/-

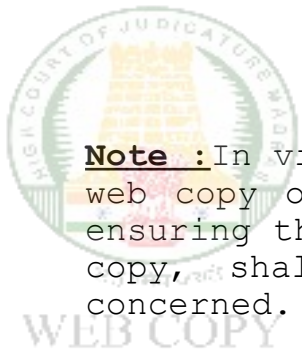
Assistant Registrar (A.D.II)

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/ /2021

Sub Assistant Registrar(CS)

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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 Commissioner of Police
Madurai City.
- 2.The Superintendent of Police,
Office of the Superintendent of Police,
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Chengalpattu District.
- 3.The Inspector of Police,
All Women Police Station,
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- 4.The Inspector of Police,
Kelambakam Police Station,
Kelambakam,
Chengalpattu District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.BALAMURUGAN, Advocate (SR-30249[F] dated 24/09/2021)

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-30405[F] dated 27/09/2021)

H.C.P. (MD)No.1410 of 2021
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RD(20.10.2021) 3P 8C