



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

H.C.P.No.250 of 2022

C.M.Gayathri

..Petitioner

Vs.

1. Chennai Commissioner of Police,
132, EVK Sampath Road,
Vepery, Periyamet,
Chennai - 600 007.
2. Ambattur Deputy Commissioner of Police,
Vivekananda Nagar, TNHB Mig V Block,
Avadi, Chennai - 600 071.
3. The Inspector,
Korattur Police Station,
E Ave Road, TNHB Colony,
TVS Industries,
Korattur, Chennai - 600 080.
4. D.V.Rakesh

..Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus directing the respondents 1 to 3 to secure and produce the petitioner's son D.R.Vedanth, aged about 7 years, who is under the custody of the fourth respondent and subsequently, to take action against the fourth respondent for illegally detaining the petitioner's son D.R.Vedanth even after his custody was granted to the petitioner by the III Additional Principal Family Court, Chennai, in O.P.No.3670 of 2019 dated 27.11.2021.

For Petitioner : Mr.G.Mohanakrishnan

For Respondents: Mr.R.Muniyapparaj
Additional Public Prosecutor[R1 to R3]
Mr.R.Abdul Mubeen [R4]



ORDER

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

This petition has been filed seeking a direction to the respondents 1 to 3 to secure and produce the petitioner's son D.R.Vedanth, aged about 7 years, who is under the custody of the fourth respondent and subsequently, to take action against the fourth respondent for illegally detaining the petitioner's son D.R.Vedanth even after his custody was granted to the petitioner by the III Additional Principal Family Court, Chennai, in O.P.No.3670 of 2019 dated 27.11.2021.

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

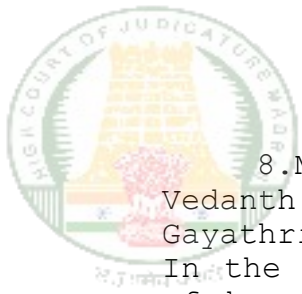
3.Rakesh got married to Gayathri on 06.12.2009 and through the wedlock, they have two children Vedanth (8 years) and Yagnav (5 years). On account of marital discord, the couple got estranged and they filed a petition for divorce by mutual consent in O.P.No.403 of 2019 on the file of III Additional Judge, Family Court, Chennai, in which, the Family Court, by order dated 05.04.2019, granted a decree of divorce by mutual consent and as regards the custody of the children, it is stated in the order that the child Vedanth will remain with Rakesh and Yagnav will remain with Gayathri.

4.It appears that after the divorce, Rakesh got married. Alleging that the child Vedanth is not being properly brought up by Rakesh, Gayathri filed a custody petition in O.P.No.3670 of 2019 u/s.6 of the Hindu Minority and Guardianship Act r/w Section 26 of the Hindu Marriage Act, before the Family Court. Rakesh was set ex parte in O.P.No.3670 of 2019 and the learned III Additional Judge, Family Court, Chennai, passed an ex parte order dated 27.11.2021 appointing Gayathri as the guardian of Vedanth and also giving her permanent custody. Alleging that the whereabouts of Rakesh and Vedanth are not known, Gayathri has filed the present petition.

5.On notice, Mr.R.Abdul Mubeen, Advocate, entered appearance for Rakesh. Today, both Rakesh and Gayathri are present in the Court.

6. Heard Mr.G.Mohanakrishnan, learned counsel appearing for Gayathri, Mr.R.Muniyapparaj, learned Additional Public Prosecutor, appearing for the State and Mr.R.Abdul Mubeen, learned counsel appearing for Rakesh.

7. Mr.R.Abdul Mubeen, learned counsel, stated that Rakesh has filed an application in I.A.No.3 of 2021 in O.P.No.3670 of 2019 for setting aside the ex parte order dated 27.11.2021 and the same is pending.



8.Mr.G.Mohanakrishnan, learned counsel, submitted that Vedanth is not being properly taken care of by Rakesh and that Gayathri has not had access to the child Vedanth after divorce. In the affidavit, Gayathri has also made allegations in respect of her claim for custody of the child via this Writ of Habeas Corpus Petition.

9.This Court gave its anxious consideration to the rival submissions.

10. The fact remains that the custody of Vedanth was given to Rakesh by the Family Court in the divorce proceedings. Now that, guardianship and custody proceedings are pending in O.P.No.3670 of 2019, it would not be proper for this Court to exercise the habeas corpus jurisdiction for executing the ex parte order of the Family Court. Be that as it may, Rakesh should have to pay a penalty for not having appeared before the Family Court in O.P.No.3670 of 2019.

11.It is represented that the matter is posted on 23.03.2022 in the Family Court, Chennai. Hence, we direct both Rakesh and Gayathri to be present in the Family Court with Vedanth and Yagnav on that day. On the subsequent hearing dates also, Rakesh should have to bring Vedanth to the Family Court. Gayathri will have access to Vedanth in the Child Care Centre/ Mediation room attached to the Family Court. However, she cannot take away Vedanth from there.

12.We direct the learned III Additional Judge, Family Court, Chennai, to dispose of I.A.No.3 of 2021 in O.P.No.3670 of 2019 within a period of three months from 23.03.2022 uninfluenced by whatever is stated above. We make it clear that the above arrangement is only a temporary arrangement and it is for the Family Court to pass appropriate order in this regard. In the event of Family Court allowing I.A.No.3 of 2021 in O.P.No.3670 of 2019 and setting aside the ex parte order dated 27.12.2021, the proceedings in O.P.No.3670 of 2019 shall be completed within three months thereafter, provided both parties co-operate.

Accordingly, this Habeas Corpus Petition is disposed of with the above direction.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm



To

1. The III Additional Principal Judge,
The III Additional Principal Family Court,
Chennai.

2. The Chennai Commissioner of Police,
132, EVK Sampath Road,
Vepery, Periyamet,
Chennai - 600 007.

3. The Ambattur Deputy Commissioner of Police,
Vivekananda Nagar, TNHB Mig V Block,
Avadi, Chennai - 600 071.

4. The Inspector,
Korattur Police Station,
E Ave Road, TNHB Colony,
TVS Industries, Korattur,
Chennai - 600 080.

5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.G.Mohanakrishnan, Advocate, S.R.No.14548

+1cc to Mr.R.Abdul Mubeen, Advocate, S.R.No.14970

H.C.P.No.250 of 2022

BR(CO)
RGA(10/03/2022)