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H.C.P.No.1350 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.10.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

H.C.P.No.1350 of 2022

P.Senthil

.. Petitioner

Vs.

1.S.Priya

2.State by
The Commissioner of Police
Central Crime Branch
Vepery, Chennai 600 007

3.State by
The Inspector of Police
E-4 Abiramapuram Police Station
Chennai

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS directing the 2nd and 3rd respondents to produce the two detenus viz., S.Shriya, aged about 16 years and S.Diya, aged about 12 years, minor daughters of the petitioner



H.C.P.No.1350 of 2022

and further direct the 1st respondent to return the children to the petitioner along with their passport as per the temporary order dated 22.03.2022 passed by the District Court at Bexar County, Texas, U.S.A. in case No.2021CI25074 and hand over custody to the petitioner.

For Petitioner : Mr.R.C.Paul Kanagaraj
for Mrs.Gajalakshmi Rajendran

For R1 : Mr.N.Manoharan & Mr.V.Srikanth
for Mr.Susanna Prabhu

For R2 and R3 : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

[Made by P.N.PRAKASH, J.]

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

2. It is the case of Senthil that, he got married to Priya on 29.04.2004 in Chennai; both of them are software professionals; Senthil has been employed in the U.S. from 2005 onwards; while they were in the U.S., they were blessed with two female babies, viz., S.Shriya (DOB : 26.07.2006) and



H.C.P.No.1350 of 2022

S.Diya (DOB : 22.01.2010); since both the children were born in the U.S., they are natural citizens of the U.S. and they hold U.S. passports; initially, Shriya was studying in a school in the U.S., but, at the instance of Priya, she was removed and admitted in a school in Chennai in the year 2010; for two years, both the children were studying in a school in Chennai, but, since, they were not able to adapt to the educational system in India, Priya herself brought them to the U.S. in 2012 and again, in 2014, she took the children back to Chennai; however, he continued to work in the U.S.; in 2018, he acquired U.S. citizenship; though the children wanted to study in the U.S., Priya was not agreeable for that; but, she assured Senthil that she would send the children to the U.S. after Shriya completes her 10th Standard in Chennai; believing her words, Senthil did not take any steps to take custody of the children; however, even after Shriya completed her 10th standard, Priya was not willing to send the children to the U.S. and she was also not permitting him to speak to the children; therefore, he filed a petition “for parent-child relationship” before the District Court, Bexar County, Texas, U.S. in case No.2021CI25074; despite notice, Priya did not appear and therefore, the Texas Court passed an order on 22.03.2022, directing Priya to



H.C.P.No.1350 of 2022

return the children to him; since Priya did not comply with the order, he has filed the present habeas corpus petition.

3. On notice, Priya appeared with her counsel and refuted each of the allegations made by Senthil. Priya stated, *inter alia*, that Senthil has filed a divorce petition in H.M.O.P.No.260 of 2021 in the Family Court, Chennai and the same is pending.

4. It is Priya's contention that the children are now studying very well in a reputed school in Chennai and they may not be able to adapt to the culture that obtains in the U.S., which is far removed from Eastern culture. She further stated that, she entered appearance in the proceedings before the U.S. Court and submitted to the said Court that the children have been in India since 2010 and were beyond the territorial jurisdiction of the U.S. Court, which was accepted by the Texas Court and the case filed by Senthil was dismissed on 23.09.2022. Priya also stated that on 15.07.2022, Senthil took the children from their school and since then, he has been having them in his parents' house in Nungambakkam.



H.C.P.No.1350 of 2022

5. The text messages exchanged between Senthil and Priya show that Senthil had informed Priya that he will pick the children, for which, Priya had also consented. As stated above, after this petition was filed, Senthil took custody of the children from their school on 15.07.2022 and informed Priya about it.

6. At this juncture, it may be pertinent to set out the trajectory of this case, since the date of its filing viz., 14.06.2022.

7. When this matter came up for hearing on 25.07.2022, this Court passed the following order :

“The petitioner/father of the detenues, the first respondent/mother of the detenues and the detenues, namely, S.Shriya and S.Diya are present before this Court. We interacted with the parents as well as the children. The children are fond of their parents and they are eager to live with both of them. They stated that there is a slight difference of opinion in between their parents. Further stated that though they made every attempt to reunite them, they are not able to achieve the said object.

2. We feel that though the scope of the Habeas Corpus Petition is very limited, taking note of the family in question, we decided to refer the matter for Mediation. Both the petitioner and the first respondent expressed their willingness for mediation to bring the issue to an amicable settlement.

3. As agreed by the learned counsel appearing for both the parties, this Court is inclined to refer the matter to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras to look into the possibilities of arriving at an amicable settlement between the parties.



WEB COPY



H.C.P.No.1350 of 2022

4. Accordingly, the matter is referred to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras. Mrs.Uma Ramanathan, Mediator, Tamil Nadu Mediation and Conciliation Centre, High Court, Madras shall mediate between the parties so as to resolve the issue amicably.

5. Registry is directed to send the entire records in this case to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras. After conclusion of proceedings, the Tamil Nadu Mediation and Conciliation Centre is directed to submit its report to this Court. Parties along with their respective counsel are directed to appear before the Mediation Centre on any date convenient to the Mediator.

6. Post the matter along with the report on 04.08.2022.”

8. On 16.08.2022, this Court passed the following order :

“Heard Mr.S.Suresh, learned counsel for the petitioner/father, Ms.Susanna Prabhu, learned counsel for the first respondent/mother and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor appearing for the second and third respondents.

2. The learned counsel appearing for both parties would submit that the Mediator *viz.*, Uma Ramanathan is unwell and she is willing to conduct mediation through video conferencing, as she is not in a position to conduct physical mediation at least for next two weeks.

3. The learned counsel for the first respondent/mother would submit that the petitioner/father is trying to take the children out of this country when the matter is *sub judice* before this Court. She would further submit that the first respondent/mother may be permitted to visit her daughters, as they are suffering from fever.

4. In response, the learned counsel for the petitioner/father would submit that only the first daughter of the petitioner/father was taken to the embassy for the purpose of renewal of the US passport, which got expired in September 2021. He would further submit that the petitioner/father is aware that the matter is *sub judice* before this Court. Further, he would submit that the petitioner/father has no objection in the first respondent/mother meeting the children. It is his further submission that the petitioner/father is planning to fly to the US on 24.08.2022 and that the matter may be posted for hearing on any date before that.

5. Taking note of the above submissions, we permit the Mediator to conduct mediation through video conferencing. In the meanwhile, the first respondent/mother can visit the children at the residence of the



H.C.P.No.1350 of 2022

petitioner/father. If the children are willing to go with the first respondent/mother, she can take them with her and leave them at the residence of the petitioner/father on or before 20.08.2022.

Post the matter on 22.08.2022.”

9. On 22.08.2022, this Court passed the following order :

“It is represented by both parties that Mrs. Uma Ramanathan is indisposed and she will not be in a position to mediate till she recovers and both parties have requested either to take up the matter on merits or refer the matter to another mediator.

2. On suggesting the name of Mr.Justice N. Kirubakaran, a retired Judge of this Court, as mediator, both parties consented. The learned Judge has also agreed to mediate between the parties.

3. Parties are expected to appear before the Mediator along with the children on 24.08.2022 after ascertaining his convenient time.

4. In case of failure of mediation, the matter to be listed before this Court on 12.09.2022.”

10. Mr.Justice N.Kirubakaran (Retd.), Sole Arbitrator, sent a report dated 26.08.2022 to this Court, the operative portion of which, reads as under :

“Both the parties along with their Advocates are present. The children are brought by the father namely the petitioner. The Mediator in the absence of the counsel and children spoke to the parties. Further they were individually given audience to know about their position.

Similarly, in the absence of all the Mediator spoke to their children to know about their perception about their parents. It seems a lot of psychological issues are involved and therefore, it is better to refer the spouses to an unexperienced psychologist to guide them.

With the consent of both the parties, the parties along with the children are directed to have consultation and counselling with Dr.Nappinai, Psychologist, Psych Hub, Anna Nagar, Chennai (M-94443 68200). In fact, Mr.Susanna Prabhu, counsel for the wife spoke to the doctor and fixed appointment today at 06.00 p.m.



WEB COPY



H.C.P.No.1350 of 2022

Therefore the parties and children are advised to be present at 06.00 p.m. in the doctor's clinic today. Since, counselling would require time by having more than one sitting, the next mediation would be on 12.09.2022 at 12.00 noon.

Call the matter on 12.09.2022 at 12.00 noon in the same venue.”

11. Pursuant to the above, Senthil, Priya and the children were examined by Dr.Nappinnai, Ph.D., Consultant, Psychologist and her psychological reports and assessments are with us. We do not want to make this order prolix by extracting the findings of the Psychologist.

12. On 26.09.2022, Senthil brought the children to this Court and Priya was also present. After hearing both sides, we interacted with the children in our chambers privately. The children told us that they want to go with their father to the U.S. We felt that, since the children were in the custody of Senthil from 15.07.2022, they say so, having been influenced by him. Therefore, in order to put both of them on an even keel, we asked the children to go with Priya and stay with her for sometime and come back to us on 11.10.2022. Accordingly, the children accompanied Priya and were with her, as directed by us.



H.C.P.No.1350 of 2022

13. Today, both the parties were present with the children. We interviewed the children in our chambers with the doors closed. They seem to be well informed. Both of them speak in unison and they say that they want to go to the U.S. and study there as they believe that they have better education prospects in the U.S. We even advised Shriya that she could think of going to the U.S. after completing her 12th standard. But, she reasoned that, only if she joins a school in the U.S., would she be able to take up higher studies in a reputed University there and therefore, she is keen to go with her father and prosecute her studies there. We also observed that both the children are fond of their mother too and they told us that they would come during summer vacation to India and would also ask their father to make arrangements for their mother's visit to the U.S. to see them. We found that, even after the children were with their mother for the last 15 days, they continued to stick on to their original stand *i.e.*, to go with their father to the U.S.

14. On a conspectus of the facts obtaining in this case and also bearing in mind the paramount interest of the children, we are of the



H.C.P.No.1350 of 2022

considered opinion that interests of justice would be served, if the custody of the children is given to Senthil. As regards visitation rights for Priya, Senthil stated that he would bring the children to India during their school summer recess and would also bear the expenses of Priya to come to the U.S. and stay in a place other than his house for a month.

In fine, we hand over the custody of the children to Senthil and this habeas corpus petition is ordered accordingly.

[P.N.P., J.] [T K R, J.]

12.10.2022

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H.C.P.No.1350 of 2022

To
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1.The Commissioner of Police
Central Crime Branch
Vepery, Chennai 600 007

2.The Inspector of Police
E-4 Abiramapuram Police Station
Chennai

3.The Public Prosecutor
High Court, Madras



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H.C.P.No.1350 of 2022

P.N.PRAKASH, J.
AND
RMT.TEEKAA RAMAN, J.

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H.C.P.No.1350 of 2022

12.10.2022