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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

H.C.P.No.1889 of 2021

V.Thamaraiselvan
S/o.Varatharaj

..Petitioner

Vs.

1. The Superintendent of Police,
O/o.Superintendent of Police,
Coimbatore District.
Coimbatore - 641 018.
2. The State represented by
The Inspector of Police,
Karumathampatty Police Station,
Karumathampatty,
Coimbatore District.
3. M.Gracy
W/o.Thamaraiselvan

..Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Habeas Corpus directing the respondents 1 and 2 herein to produce the petitioner's minor girl child, namely, T.Yakhsha, aged about 7 years and hand over custody to the petitioner.

For Petitioner : Mr.A.Tamilarasan

For Respondents: Mr.R.Muniyapparaj,
Additional Public Prosecutor [R1 & R2]
Mr.P.Saravanan [R3]

O R D E R

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

This petition has been filed seeking a direction to the respondents 1 and 2 herein to produce the petitioner's minor girl child, namely, T.Yakhsha, aged about 7 years and hand over custody to the petitioner.



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2. On 20.12.2021, we passed the following order:

'On 24.11.2021, we passed the following order :

"It is the case of the petitioner that he got married to Gracy/R3 on 08.06.2011 and through the wedlock, he has a child viz., Yaksha, who was born on 27.07.2015. The matrimonial relationship between the petitioner and his wife Gracy/R3 soured, since it is alleged that Gracy/R3 had developed intimacy with one Ram.

2. The petitioner has alleged that on 11.12.2020, his wife Gracy/R3 came to his house and forcibly took away his daughter Yaksha, after attacking his mother.

3. In this regard, on a complaint given by the petitioner, a petition enquiry in Karumathampatti Police Station C.S.R.No.378 of 2020 has been registered. It is also seen that Gracy/R3 has filed G.W.O.P.No.313 of 2021 in the Family Court, Coimbatore, for appointing her as the guardian of the child Yaksha, in which, the petitioner has been shown as the respondent.

4. According to the petitioner, Gracy/R3, after having filed G.W.O.P., is not attending the Family Court and she is also not bringing the child to the Court.

5. Today M.Suresh Kumar (Mobile No.94981 73947), Sub-Inspector of Police, Karumathampatty Police Station, Coimbatore District, is present.

6. On instructions, the learned Additional Public Prosecutor submitted that the police went to the address given by Gracy/R3 in G.W.O.P.No.313 of 2021 viz., Door No.312-A, 1st Floor, Water Tank Street, Karunanithi Nagar, Sowripalayam, Coimbatore-641 028, but, Gracy/R3 was not there.

7. In such view of the matter, we direct the petitioner to go in person to the second respondent/police and lodge a complaint about the missing of his wife and child and on such complaint being given, the second respondent/police shall register a regular FIR for 'woman and child' missing and produce Gracy/R3 and the child Yaksha, aged about 7 years, before this Court on 15.12.2021. The petitioner shall also be present before this Court on that day.

Post the matter on 15.12.2021."

2. Again, when the matter was taken up for hearing on 15.12.2021, we passed the following order :

"Thiru.C. Rajadurai, Inspector of Police,



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Karumathampatti Police Station, is present before this Court today.

On instructions, the learned Additional Public Prosecutor submitted that pursuant to our order dated 24.11.2021, on the complaint given by the petitioner, a case in Karumathampatti Police Station Crime No.738 of 2021 has been registered "for women and child missing".

Mr.P.Saravanan, Advocate, who entered appearance for the 3rd respondent, appeared via video conferencing along with the child stated that the child is not well and that he is unable to produce the child before this Court.

The petitioner is also present via video conferencing.

Accepting the submission of the learned counsel for the 3rd respondent, the 3rd respondent is directed to produce the child before this Court on 20.12.2021."

3. Today, Mr.Suresh Kumar, Special Sub Inspector of Police, Karumathampatti Police Station, Coimbatore District is present before this Court. The petitioner and his counsel and M.Gracy/3rd respondent herein, along with the child, are also present before this Court.

4.It is seen that after Gracy had filed G.W.O.P.No.313 of 2021, she has taken away the child from the custody of the petitioner on 11.12.2020. Thereafter, she has not been seriously prosecuting the case in G.W.O.P. because, the custody of child had already come to her. We are of the view that the petitioner, being the father of the child would also be entitled to visitation rights, which cannot be denied.

5.When we enquired with Gracy, she stated that she is residing at No.312-A, First Floor, Water Tank Street, Karunanithi Nagar, Sowripalayam; her mobile number is 99761 54813; she is working as an Accountant in Sri Shanmugavel Industries, Sowripalayam, Coimbatore. She agreed that she would permit the petitioner visitation rights in the weekends, under which, the petitioner could come during weekends (either Saturday or Sunday) to take the child at 10'o clock in the morning and drop the child by 6'o clock in the evening. This is purely a temporary arrangement and it is open to the Family Court, Coimbatore, where G.W.O.P.No.313 of 2021 is pending, to pass appropriate orders in the said case. It is made clear that the case in G.W.O.P.No.313 of 2021



shall not be withdrawn by Gracy/3rd respondent, without further orders of this Court.

6.If the petitioner finds any difficulty in getting visitation rights, he may approach the Inspector of Police, Karumathampatty Police Station, who shall provide necessary assistance.

Post this matter on 28.01.2022.'

3.Today, V.Thamaraiselvan, the petitioner herein, is present along with his Advocate Mr.A.Tamilarasan via video conferencing. Mr.P.Saravanan, learned counsel appearing for the third respondent, is also present via video conferencing.

4. We heard either side. It is seen that the parties are complying with the directions issued by us in the order dated 20.12.2021 and they are also contesting the matter in G.W.O.P.No.313 of 2021 in the Family Court, Coimbatore. As directed by us above, Gracy (third respondent herein) cannot withdraw G.W.O.P.No.313 of 2021, just because she has got custody of the child. The said proceedings should go to its logical end before the Family Court, Coimbatore. The Family Court, Coimbatore, may pass appropriate orders without in any manner being influenced by what has been stated by us. It is open to the Family Court, Coimbatore, to even modify the visitation rights that has been granted by this Court to the petitioner. Since the child cannot be said to be in the illegal custody of third respondent, no Writ of Habeas Corpus can be issued.

Accordingly, with the above direction, this Habeas Corpus Petition stands closed with liberty to the parties to work out their remedies in the manner known to law.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Superintendent of Police,
O/o.Superintendent of Police,
Coimbatore District.
Coimbatore - 641 018.



2. The Inspector of Police,
Karumathampatty Police Station,
Karumathampatty,
Coimbatore District.

3. The Family Court,
Coimbatore. [GWOP No.313/2021]

4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.A.Tamilarasan, Advocate, S.R.No.6080

+1cc to M/s.P.Saravanan, Advocate, S.R.No.5135

H.C.P.No.1889 of 2021

SSN(CO)
RGA(09/02/2022)