



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2022

Coram

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

H.C.P.No.1974 of 2021

Hemalatha

...Petitioner

Vs.

1. The State represented by
The Superintendent of Police,
Thiruvannamalai,
Thiruvannamalai District.

2. The Inspector of Police,
Kadaladi Police Station,
Thiruvannamalai District.

3. Kumaresan

4. Kalavathi

5. Vignesh

6. Nithiya

...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 and 2 to produce the petitioner's minor son Master Durkesh, aged about 3 years, before this Court and hand over his custody to the petitioner herein.

For Petitioner :Mr.E.Kannadasan

For Respondents :Mr.R.Muniyapparaj

Additional Public Prosecutor

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 to produce the petitioner's minor son Master Durkesh, aged about 3 years, before this Court and hand over his custody to the petitioner herein.



WEB COPY

2. On 22.12.2021, we passed the following order:

'On 15.12.2021, we passed the following order:

"It is the case of Hemalatha, the petitioner (Mobile No. 95666 80850) that she got married to Kumaresan, the third respondent, on 27.10.2017 and through the wedlock, she has a child Durkesh, who was born on 05.12.2018; owing to marital discord, she got estranged from her husband Kumaresan and was living in her parents' house at Tiruvannamalai from 07.01.2021 with her child Durkesh.

2 While that being so, it is alleged by the petitioner that the respondents 3 to 6 forcibly took away her child from her custody on 17.09.2021 and that the whereabouts of her child are not known. In connection with this, on a complaint given by the petitioner, a case in Kadaladi P.S. Cr.No.621 of 2021 has been registered on 21.09.2021 for the offences under Sections 147, 294(b) and 323 IPC against Kumaresan (R3) and five of his family members. Under such circumstances, this habeas corpus petition has been filed seeking a direction to the respondents 1 and 2 to produce the person and body of the petitioner's son Durkesh, aged about 3 years, before this Court and hand over his custody to the petitioner.

3 On 06.12.2021, this Court passed the following order:

"Notice to the third respondent returnable by 13.12.2021. Private notice is also permitted.

2. Today, K.Ranganathan, Special Sub-Inspector of Police, Kadaladi Police Station, Tiruvannamalai District, is present.

3. The second respondent/police is directed to produce Kumaresan, third respondent and the detenu Durkesh, aged about 3 years, before this Court on 13.12.2021. The petitioner shall also be present before this Court on that day.

Post on 13.12.2021."

4 Subsequently, on 13.12.2021, this Court passed the following order:



WEB COPY

"It is brought to our notice that an Advocate, by name, Mr. P. Prasanna Kumar, is giving protection to the third respondent and that he has even undertaken to produce the third respondent before this Court.

2. We don't want to take any precipitative action in this regard.

3. Call on 15.12.2021. The police shall produce the third respondent and the child before us on that day."

5 Today, when the matter was taken up for hearing, Mr. K. Ranganathan, Special Sub Inspector of Police, Kadaladi Police Station is present. Hemalatha and respondents 4 to 6, viz., Kalavathi, Vignesh and Nithiya, are also present.

6 Kalavathy, the fourth respondent, stated that her son Kumaresan (A1/third respondent) came with the child Durkesh into the High Court campus, but, fearing that he would be arrested by the police, he had gone away. It is her allegation that the police are not permitting her to occupy her own house, viz., Door No. 3/112-C, Jeevanandam Street, Puliyankannu, Ranipet, Ranipet District and that she and her family members are going around like nomads. Further, according to her, the petitioner is in the occupation of the house and is preventing access to her. She further stated that she will ensure that her son Kumaresan (A1/third respondent) hands over the child to the petitioner, if proper police protection is given to her to occupy her own house.

7 In such perspective of the matter, we direct the respondents 4 to 6 to ensure that Kumaresan (A1/third respondent) hands over the child to the petitioner before the Inspector of Police, A.W.P.S., Ranipet. On such handing over of the child, the Inspector of Police, A.W.P.S., Ranipet, shall ensure that the respondents 3 to 6 peacefully occupy their house in Door No. 3/112-C, Jeevanandam Street, Puliyankannu, Ranipet, Ranipet District and that there is no other disturbance from the petitioner to the respondents 3 to 6.



WEB COPY

8 It is made clear that if Kumaresan (A1/third respondent) does not hand over the child as directed by us above, the Inspector of Police, A.W.P.S., Ranipet, shall secure the child and hand over the same to the petitioner and report to this Court.

9 The office of the learned Public Prosecutor shall inform the Inspector of Police, A.W.P.S., Ranipet, about this order.

Post on 22.12.2021 (Wednesday)."

2. Today, A.D.Vasuki (Mobile No.94981 60655), All Women Police Station, Ranipet District, Mr.M.Muralidharan (Mobile No.94432 35548), Inspector of Police, Kadaladi Police Station, Thiruvannamalai District, are present. The petitioner and the respondents 3 to 6 are also present along with the child Durkesh.

3. Heard Mr.E.Kannadasan, learned counsel for the petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents 1 and 2 and Mr.V.R.Appaswamee and Mr.R.Sasikumar, learned counsel for the respondents 3 to 6.

4. The child Durkesh was handed over to the petitioner by the third respondent in the open Court. However, it is brought to the notice of this Court that the petitioner has initiated a proceedings under the Protection of Women from Domestic Violence Act, 2005, in D.V.C.No.9 of 2021 before the Judicial Magistrate Court, Ranipet, against the entire family members of the third respondent and has also sought attachment of the individual properties of the fourth respondent (Kalavathy).

5. We are of the view that this appears to be an abuse of process of law. However, the learned counsel for the petitioner on instruction from the petitioner stated that the petitioner would withdraw D.V.C.No.9 of 2021.

6. The Judicial Magistrate, Ranipet, is directed to accept the withdrawal memo that will be filed by the petitioner, even before the due date of hearing by advancing the hearing, if required.



WEB COPY

7. It is also brought to the notice of this Court that the third respondent has filed guardianship proceedings in G.W.O.P.No.154 of 2021 in the District Court, Vellore, against the petitioner and the matter is posted for hearing tomorrow.

8. As a temporary measure, this Court issues the following directions:

- i. The petitioner shall reside in her parental home at No.2/260, Mel Street, Venkatampalayam, Adamangalapudur, Thiruvannamalai District;
- ii. We permit the third respondent to visit the child in the weekends at the residence of the petitioner on prior intimation and the petitioner shall provide free access to the third respondent;
- iii. However, the third respondent shall not take away the child from the custody of the petitioner; and
- iv. If there is any difficulty for the third respondent in getting visitation rights, he may approach the Inspector of Police, Kadaladi Police Station, Thiruvannamalai District, who may facilitate the implementation of this Court's order.

9. As stated above, this arrangement is purely temporary and it is open to the Court dealing with G.W.O.P. to pass appropriate orders on visitation, both interim and final, uninfluenced by whatever has been stated above.

10. The keys of the house at No.3/112-C, Jeevanandam Street, Puliyankannu, Ranipet District, has been handed over to the third respondent in the open Court by the police and the third respondent and his family members can peacefully stay in that house without any disturbance. If there is any threat from the petitioner, it is open to the third respondent to approach the Inspector of Police, All Women Police Station, Ranipet, for help and the police shall render the necessary protection.

Post the matter on 07.01.2022 under the caption "for reporting compliance". The Registry shall print the names of Mr.V.R.Appaswamee and Mr.R.Sasikumar, learned counsel for the respondents 3 to 6 in the cause list.'



WEB COPY

3. On 07.01.2022, we passed the following order:

' Today, when the matter was taken up for hearing, learned counsel for both parties appeared via video conferencing and stated that the petitioner has withdrawn D.V.C.No.9/2021 on the file of Judicial Magistrate Court, Ranipet.

2. It is the grievance of the learned counsel for the respondents 3 to 6 that the petitioner has taken away all the household articles including the educational certificates of the third respondent from the house in Door No.3/112-C, Jeevanandam Street, Puliyankannu, Ranipet, Ranipet District.

3. Learned counsel for the petitioner submitted that he would give appropriate advice to the petitioner, if that is so and report to this Court.

Call on 27.01.2022.'

4. Heard Mr.E.Kannadasan, learned counsel for the petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the State/respondents 1 and 2 and Mr.R.Sasikumar, learned counsel for the respondents 3 to 6.

5. Mr.R.Sasikumar, learned counsel for the respondents 3 to 6, submitted that the petitioner has handed over the educational certificates of third respondent only and not that of respondents 5 and 6.

6. Mr.E.Kannadasan, learned counsel for the petitioner, submitted that the petitioner does not have the educational certificates of respondents 5 and 6 and that pursuant to the order of this Court, the petitioner has returned the educational certificates of third respondent.

7. Since these are disputed questions of fact, we cannot go into the same in this Habeas Corpus Petition. Mr.R.Sasikumar, learned counsel for the respondents 3 to 6 submitted that with regard to the loss of educational certificates of respondents 3 to 6, a complaint has been given to the Inspector of Police, SIPCOT Police Station and a petition enquiry in CSR No.913/2021 is being conducted.



8. In view of the above, we direct the Inspector of Police, SIPCOT Police Station, to conduct a thorough enquiry in CSR No.913/2021 with regard to the allegations made by the complainant therein and take action in accordance in law.

Since nothing survives for further adjudication in this petition, this Habeas Corpus Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

gm
To

- 1.The Superintendent of Police,
Thiruvannamalai,
Thiruvannamalai District.
 - 2.The Inspector of Police,
Kadaladi Police Station,
Thiruvannamalai District.
 - 3.The Inspector of Police,
SIPCOT Police Station.
 - 4.The Public Prosecutor,
High Court, Madras.
- +1 CC to Mr.E.Kannadasan, Advocate sr 4834
+1 CC to Mr.Appaswamee, Advocate sr 5022.

H.C.P.No.1974 of 2021

MG(CO)
SP(09/02/2022)