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H.C.P.No.1884 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2022

Coram

The Honourable Mr.Justice **S.VAIDYANATHAN**
and

The Honourable Mr.Justice **C.SARAVANAN**

H.C.P.No.1884 of 2022

Mrs.Karthika

... Petitioner

-VS-

1. The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.

2. The Inspector of Police,
All Women Police Station,
Thandavarampattu,
Thiruvannamalai District.

3. Suresh

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the 1 and 2nd Respondent police to produce the Petitioner's minor child viz., Thejesh, aged about 4 years from the illegal custody of the 3rd Respondent and produce him before this Court and handover to the Petitioner.

For Petitioner : Mr.G.Balamanikandan

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



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For Petitioner : Mr.G.Balamanikandan
(R1 and R2)

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ORDER

This Habeas Corpus Petition has been filed for a direction to the 1st and 2nd Respondent police to produce the Petitioner's minor child viz., Thejesh, aged about 4 years from the illegal custody of the 3rd Respondent and produce him before this Court and handover to the Petitioner.

2. The learned counsel appearing for the Petitioner submitted that there was a matrimonial dispute between the petitioner and the 3rd respondent and the petitioner went to her parental home for giving birth to her 2nd child. While she was in her parental home along with her two children, in the month of May 2022, 3rd Respondent had taken her minor son viz., Thejesh aged about 4 years forcibly from her custody. It is further submitted that when she requested to handover the child, the 3rd Respondent failed to handover the child and also filed F.C.O.P.No.132 of 2022 for divorce.

3. The learned Additional Public Prosecutor appearing for the



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Respondents 1 and 2 submitted that it was the Petitioner, who had left her minor son viz., Thejesh with the custody of the 3rd Respondent and gone to her parental home to deliver the 2nd child as early as in the year 2020. The petitioner, after coming to know of the fact that the 3rd Respondent filed a petition in F.C.O.P.No.132 of 2022 for divorce and after receipt of notice, made a complaint as if the 3rd Respondent has kidnapped her child.

4. Heard both sides. Perused the records.

5. Admittedly, there is a matrimonial dispute between the petitioner and the 3rd Respondent and that the minor child viz., Thejesh is under the care and custody of the 3rd Respondent, who is none other than his father. It is always to be remembered that parents must shut down their egos for the welfare of the children. One of us (SVNJ), in the case of **Dr.P.Sasikumar vs. The Director, Animal Husbandry and Veterinary Services, Chennai and another [W.P.No.1613 of 2021] decided on 31.03.2021** had observed that “Husband and wife must realize that, 'ego' and 'intolerance' are like footwear and should be left out of their house, when they enter the home, else, the



child/children will have to face a miserable life”.

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6. In yet another case in **S.Rajeswari vs. The Secretary, Department of Treasuries and Accounts, State of Tamil Nadu and others [W.P.No.7280 of 2021]** decided on 19.03.2021, one of us (SVNJ) further observed thus,

“6. It is quite often said that behind every successful man, there is a woman and according to me, it is not a single woman, but women, namely, mother and wife, who are two eyes of a man. ***In a family, wife is a root and husband is a trunk and other members of a family are branches. If the root is damaged, the entire family will get ruined. It is also equally important for a man to provide a sense of safety and security to his better half, who joined hands with a lot of expectations.*** Though this Court is not a fact finding authority to examine as to who is at fault, in my view, the petitioner must have thrown all her egos for the welfare of her children, instead of foisting cases on the 4th respondent one after the other.”

7. Insofar as the present case is concerned, the parties should bear in mind that 'ego' is just a small three letter word, which can destroy a big twelve letter word called 'relationship', as ego and love will not travel together. Be that as it may, this goes without saying that this Court cannot decide about the custody of the child and it is for the petitioner, being a mother to work out her remedy before the appropriate forum for custody of the child. This Court in exercise of its jurisdiction can at the most see whether the detenu is in illegal custody of anyone or not and in this case, it cannot, at any stretch of imagination, be said that the child is in the illegal custody of the



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3rd respondent for the reason stated above.

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8. In such view of the matter, this Petition is dismissed with liberty to the Petitioner to work out her remedy before the appropriate forum. However, it is made clear that the observation made herein-above is only for the purpose of disposal of this petition and it will have no bearing on the plea that may be raised by the parties before it.

(S.V.N.,J.) (C.S.N.,J.)
23.09.2022

Index: Yes/No
arr/ar

To:

1. The Superintendent of Police,
Thiruvannamalai District,
Thiruvannamalai.
2. The Inspector of Police,
All Women Police Station,
Thandavarampattu,
Thiruvannamalai District.
3. The Public Prosecutor,
High Court,
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and
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