



WEB COPY



Order dated : 19.10.2022

HCP No.1958 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

H.C.P.No.1958 of 2022

Janani

D/o.Jayakumar

... Petitioner

Vs.

1.The District Superintendent of Police,
The Office of the District Superintendent,
Ranipet District.

2.The Inspector of Police,
Walaja Police Station,
Ranipet District.

3.Jayamohan
S/o.Kathavarayan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus directing the first respondent to produce the petitioner's son J.Theeran, aged about 2½ years, before this Court and hand over the child to the petitioner.



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For Petitioner : Mr.K.Murali
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor [R1 & R2]
Mr.G.Somasekar [R3]

ORDER

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

This petition has been filed seeking a direction to the first respondent to produce the petitioner's son J.Theeran, aged about 2½ years, before this Court and hand over the child to the petitioner.

2. It is the case of the petitioner that she got married to the third respondent in the year 2016 and through the wedlock, a son viz., J.Theeran was born on 20.04.2020. It is her further allegation that she was subjected to torture by the third respondent and was sent out of the matrimonial home and therefore, she went with her child to her paternal uncle's house. While she was there, the third respondent gave a complaint to the second respondent police as if she had gone missing, in connection with which, she was called to the police station for enquiry on 24.06.2022 and the child was forcibly taken away from her and was handed over to the third respondent.



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Therefore, the petitioner gave a complaint dated 25.08.2022 to the first respondent for taking action. Since no action was taken, the present petition is filed.

3. On notice, Mr.K.Deepanchakravarthy, Sub-Inspector of Police, Walajabad Police Station [Mobile No.83000 09912], is present. The third respondent is present with the child and Mr.G.Somasekar, Advocate, has entered appearance for him.

4. On instructions, learned Additional Public Prosecutor submitted that the third respondent gave a complaint to the second respondent police on 20.06.2022 alleging that his wife and son had gone missing and requested the police to trace them. On this complaint, the second respondent registered a case in Walajabad P.S.Crime No.273 of 2022 on 20.06.2022 for "woman and boy missing". The police traced the petitioner (Janani) and the child and they were called for enquiry. At the time of enquiry, the petitioner is said to have stated that she does not want to go with her husband (third respondent herein).



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5. At this juncture, learned counsel for the third respondent submitted that the petitioner handed over the child to the third respondent and also entered into an agreement dated 24.06.2022 for dissolving the marriage by filing appropriate application before the Court concerned. Learned counsel also alleged that the petitioner is having intimacy with one Senthil Kumar in support of which, learned counsel produced a photograph. Learned counsel also furnished a copy of the agreement and photograph to the learned counsel for the petitioner, who refuted the same and stated that all these documents have been fabricated.

6. Learned counsel for the third respondent also stated that the third respondent has initiated proceedings in G.W.O.P.No.229 of 2022 in the Court of Principal District Judge, Vellore, for the guardianship of the child. The next date of hearing of the case is 27.10.2022.

7. We gave our anxious consideration to the aforesaid submission.

8. We find that the custody of the child with the third respondent *per*



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se cannot be said to be illegal for the issuance of a writ of habeas corpus.

We cannot go into disputed question of facts in this petition. The custody of the child shall remain with the third respondent until further orders of the appropriate Court.

Accordingly, this Habeas Corpus Petition is closed with liberty to the parties to work out their remedy in the manner known to law.

[PNP, J.] [TKR, J.]
19.10.2022

Index: Yes/No
gm

To

- 1.The District Superintendent of Police,
The Office of the District Superintendent,
Ranipet District.
- 2.The Inspector of Police,
Walaja Police Station,
Ranipet District.
- 3.The Public Prosecutor,
High Court, Madras.



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