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Crl.M.P.No.16339 of 2022
in H.C.P.No.118 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.M.P.No.16339 of 2022
in
H.C.P.No.118 of 2022

D.Kotteeswarai
D/o.Dhayalan

.. Petitioner

Vs.

- 1.State represented by its
The Superintendent of Police,
Chengalpattu,
Chengalpattu District.
- 2.State represented by its
The Inspector of Police,
S14- Peerkankaranai Police Station,
Chengalpattu.

3.K.Ganesh
S/o.Kabali

.. Respondents

Criminal Miscellaneous Petition filed under Article 226 of the Constitution of India praying to clarify the order dated 04.02.2022 in H.C.P.No.118 of 2022 directing the petitioner and the third respondent to



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appear before the District Legal Service Authority, Chengalpattu or before the Tamil Nadu Mediation and Conciliation Centre of this Court.

For Petitioner : Mr.A.Ilaya Perumal

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor [R1 & R2]
Mr.G.Prabakar
Legal Aid Counsel [R3]

ORDER

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

On 04.02.2022, this Court passed the following order in
H.C.P.No.118 of 2022:

"This petition has been filed seeking a direction to the second respondent to produce the petitioner's daughter G.Pugazhini, aged about 3 years before this Court from the illegal custody of the third respondent and hand over to the petitioner.

2. It is the case of the petitioner that she and the third respondent belong to different caste, but, were intensely in love with each other for over 15 years and ultimately got married on 08.09.2011. Through the wedlock, the petitioner was blessed with a child viz., G.Pugazhini on 22.08.2018. Thereafter, on account of marital discord, the petitioner got estranged from her husband and is living with her child in her natal home. It is alleged by the petitioner that on 21.01.2022, the third respondent forcibly took away the child and thereafter, became scarce. On these allegations, the petitioner has filed the present petition.



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3. On 28.01.2022, we passed the following order:

'Mr.R.Muniyapparaj, learned Additional Public Prosecutor, takes notice for the respondents 1 and 2.

2. Private notice to the third respondent returnable by 04.02.2022.

3. The second respondent/police is directed to produce Ganesh, third respondent herein, along with the child Pugazhini, aged about 3 years, either in person or via video conferencing before this Court on 04.02.2022.

Post the matter on 04.02.2022.'

4. Today, Mr.D.Victor Rajaiah, Sub-Inspector of Police and Ms.T.Kavitha, WPC Grade-I, S14 - Peerkankaranai Police Station, produced K.Ganesh (third respondent herein) and the child. The petitioner is also present.

5. We enquired the parties individually and we are of the view that if they are sent for mediation, there is every possibility of they rejoining for the welfare of the child. Since Pugazhini is hardly three years, we are of the view that it will serve the interests of justice if her custody is handed over to the petitioner. The third respondent also understood that the child being of tender age should grow with the mother and he handed over custody of the child to the petitioner.

6. We direct the petitioner and the third respondent to appear before the Secretary, District Legal Services Authority, Sub-Court, Tambaram, on 14.02.2022 at 10.30 a.m. and the Secretary is directed to refer them to the Mediation and Conciliation Centre.

7. In the mean while, we direct the petitioner to take the child on every Saturday and Sunday to the house of the third respondent at 10.30 in the morning and spend time till 2.00 in the afternoon. This is purely an interim arrangement and it is open to the parties to approach the appropriate Court for further relief, if so advised and the said Court shall pass appropriate orders without in any manner being influenced by the directions given by us in this order.



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With the above direction, this Habeas Corpus Petition is closed."

2. Thereafter, the present clarification petition was filed by the petitioner on the ground that there is no District Legal Services Authority in Sub-Court, Tambaram and therefore, a prayer was made for modifying the direction in paragraph No.6 of the order dated 04.02.2022. Accordingly, this Court passed the following order on 18.11.2022:

"Pursuant to our order dated 08.11.2022, the police produced K.Ganesh, third respondent herein, before us. The petitioner is also present.

2. When we enquired K.Ganesh/R3, he stated that he does have any means to engage an Advocate. Therefore, we nominated Mr.G.Prabakar, Advocate (Enrollment No.159/1994; Mobile No.94448 77949) to appear for K.Ganesh/R3. The Secretary, High Court Legal Services Committee, is directed to pay Rs.10,000/- to Mr.Prabakar, Advocate, towards fee.

3. By our earlier order dated 04.02.2022, we had directed the parties to appear before the Secretary, District Legal Services Authority, Subordinate Court, Tambaram, for mediation. However, it is reported to us that there is no District Legal Services Authority in the Subordinate Court, Tambaram and on this ground, the present petition has been filed.

4. Therefore, we modify paragraph no.6 of the order dated 04.02.2022 to the effect that both parties shall appear before the High Court Mediation and Conciliation Centre for mediation. The parties are directed to appear before the Deputy Registrar, Mediation and



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Conciliation Centre, Madras High Court, today itself and thereafter, they shall appear before the Mediators as and when directed to do so. The High Court Mediation and Conciliation Centre is directed to complete the process within a period of three weeks and send a report to us on or before 07.12.2022.

Post the matter on 09.12.2022."

3. The Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, has sent a report dated 06.12.2022, wherein, it is stated as under:

"2. Mediation completed. No agreement was reached."

4. Both sides stated that despite best efforts, they were not able to bring about a rapprochement between the parties.

5. Recording the same, this Habeas Corpus Petition is closed. However, the interim arrangements provided for in the order dated 04.02.2022 holds good until orders are passed by the appropriate Court as stated in paragraph No.7 of the said order.

P.N.PRAKASH, J.



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and
N.ANAND VENKATESH, J.

gm

The Secretary, High Court Legal Services Committee, is directed to pay a sum of Rs.10,000/- [Rupees Ten Thousand only] to Mr.Prabakar, Advocate, towards fee.

[PNP, J.] [NAV, J.]
14.12.2022

Index: Yes/No
gm

To

- 1.The Secretary,
High Court Legal Services Committee.
- 2.The Superintendent of Police,
Chengalpattu,
Chengalpattu District.
- 3.The Inspector of Police,
S14- Peerkankaranai Police Station,
Chengalpattu.
- 4.The Public Prosecutor,
High Court, Madras.

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