



WEB COPY

Crl.RC.No.1474 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1474 of 2022

S.Indhu

... Petitioner

Vs.

1. Krishnan

2. Chennai

3.The Inspector of Police
All Women Police Station
Metur, Salem District

... Respondents

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to set aside the order passed in Crl.M.P.No.3343 of 2022 dated 19.10.2022 passed by learned Judicial Magistrate Court No.1, Mettur and further direct 3rd respondent to search the minor child namely Vyasamitharan aged about 4 years from the illegal custody of the 1st and 2nd respondent and hand over to the petitioner.

For Petitioner	: Mr.P.Muthamizh Selvakumar
For Respondent-3	: Mr.S.Sugendran
	Additional Public Prosecutor

**ORDER**

This Criminal Revision Case has been filed seeking to set aside the order in Crl.M.P.No.3343 of 2022 dated 19.10.2022 passed by the Judicial Magistrate Court No.1, Mettur and further direct the 3rd respondent/police to secure the minor child namely Vyasamitharan aged about 4 years from the illegal custody of the 1st and 2nd respondents and hand over to the petitioner.

2. The petitioner had filed a petition under Section 97 of Cr.P.C. before the learned Judicial Magistrate No.1, Mettur stating that her child was wrongfully confined by the respondents 1 and 2 herein and sought to issue warrant under Section 97 Cr.P.C. and also prayed for the custody of the child. The learned Magistrate after enquiry dismissed the petition by order dated 19.10.2022. Challenging the same, the petitioner has filed the present revision before this Court.

3. The learned counsel for the petitioner would submit that the marriage of the petitioner with one Prakash was solemnized on 10.07.2016. The marriage was an arranged marriage and they were blessed with a male child. After the marriage, the husband of the petitioner left to Singapore leaving the petitioner. Even at the time of delivery, the husband of the



petitioner did not visit the petitioner neither in the hospital nor in her parents house. After 45 days, when the father of the petitioner was not at home, the husband of the petitioner and the respondents 1 and 2 who are the father-in-law and mother-in-law of the petitioner, had forcibly taken the petitioner and her child to the matrimonial home and thereafter, the respondents had not permitted the parents of the petitioner to see the petitioner and the child. Subsequently, the husband of the petitioner left to Singapore and that the respondents used to harass the petitioner. The respondents only allowed the petitioner to feed the child and soon after feeding the child, they would snatch the child from the petitioner and keep the child away from the petitioner. While so, on 25.06.2021, the petitioner's husband came to India and later, he also harassed the petitioner. On 01.11.2021, the petitioner's husband had locked the petitioner in a room and went to Singapore. After 2 days, the respondents herein, taken the child and driven the petitioner out from the matrimonial home. Now the child is with the respondents and they are not lawful guardians. Therefore, the petitioner filed the petition under Section 97 Cr.P.C. before the Court below for issuance of search warrant under Section 97 Cr.P.C. stating that the child of the petitioner is in wrongful confinement with the respondents 1 and 2 and



prayed to handover the custody of the child to the petitioner, whereas the learned Magistrate failed to consider the facts and dismissed the petition.

The learned counsel for the petitioner would submit that as per Section 97 Cr.P.C., the Magistrate has got power to issue search warrant and while searching, if the child is found in the custody of the respondents 1 and 2, the child can be rescued and handed over to the petitioner. But the learned Magistrate has failed to consider the facts and also the scope of Section 97 Cr.P.C. and dismissed the petition which warrants interference.

4. Though the matter came up for admission today, the Court heard the learned counsel for the petitioner and perused the entire materials on record.

5. The counter filed by the respondents 1 and 2 before the Magistrate, clearly shows that the respondents 1 and 2 are none other than the parents of the father of the child and that the father of the child was in Singapore. The allegation in the counter is that the petitioner demanded Rs.5 lakhs from the husband of the petitioner or otherwise threatened to kill the child and she never co-operated to lead the matrimonial home. Further, the



petitioner along with her father left the matrimonial home voluntarily leaving the child. Thereafter, the petitioner's husband left to Singapore leaving the child with his parents. The petitioner also filed a police complaint in which, enquiry was also conducted. Therefore, the husband of the petitioner also filed a petition for divorce in HMOP No.115 of 2012 before the Sub Court, Mettur, and the same is pending and the child is with the custody of the lawful guardian. Further, the petitioner also filed a petition in HCP No.1432 of 2012 stating that the child was found missing and after enquiry, this Court dismissed the said petition by order dated 01.08.2022 as not maintainable. The petitioner left the child at the age of 3 months child. Now in order to harass the respondents and in order to get money from the respondents, the petitioner has been filing petitions after petition and harassing the age old parents of the husband of the petitioner who are taking care of the child.

6. It is seen that already the petitioner had approached this Court by way of Habeas Corpus Petition and the same was dismissed by this Court as not maintainable. Further, the respondents are not strangers and they are the grand parents of the child. It is not the case of the petitioner that the



whereabouts of the child is not known. Admittedly the child is with the respondents who are the grand parents/parents of the father of the child. The trial Court has rightly stated that the child is not under any confinement of the respondents. Since the respondents are the grandparents of the child, they cannot be treated as strangers or kidnappers. Since the father of the child left to Singapore for job purpose by handing over the custody of the child to his parents/respondents herein, the custody of the child with the respondents is not illegal and they are lawful guardians.

7. The learned counsel for the petitioner contended that the child is below the age of 5 years and at the tender age of below 5 years, the mother of the child is the legal guardian and therefore, the custody of the child has to be handed over to the petitioner. If the petitioner has legal right or if the petitioner has any grievance in getting the custody of the child, she can very well approach the competent Court for appropriate remedy by filing custody O.P. and substantiate that the custody of the child by the respondents is illegal and not by filing petition under Section 97 Cr.P.C. since the scope of Section 97 Cr.P.C. is not for that purpose. Therefore, the present petition filed by the petitioner is not legally sustainable.

8. Though the learned counsel for the petitioner placed reliance of the



decisions of the Hon'ble Allahabad High Court in the case of **Zahirul Hassan Vs. State of Uttar Pradesh**, the facts and circumstances of the said case is totally different from the case on hand. Therefore, the decision referred to by the counsel for the petitioner is not applicable to the present case on hand especially when there is an allegation that the petitioner herself voluntarily left the child with her in-laws and husband.

9. Now the child is under the constructive custody of father. The respondents are none other than the parents of the father of the child and therefore, their custody cannot be treated as illegal. This Court does not find any perversity in the order passed by the trial Court and there is no merit in the revision and the revision is liable to be set aside.

10. With the above observations, the Criminal Revision Case is dismissed as devoid of merit at the admission stage itself. The petitioner shall work out her remedy in the manner known to law.

08.11.2022

ksa-2



WEB COPY

Crl.RC.No.1474 of 2



P.VELMURUGAN,J.

Ksa-2

To

1. The Judicial Magistrate Court No.1,
Mettur
- 2.The Inspector of Police
All Women Police Station
Metur, Salem District
3. The Public Prosecutor
High Court of Madras, Chennai

Criminal Revision Case No.1474 of 2022

08.11.2022