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H.C.P.No.2521 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 22.12.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

H.C.P.No.2521 of 2022

D.Seethapathy

.. Petitioner

Vs.

1.The State rep. by
Commissioner of Police
Avadi Commissionerate
Avadi, Chennai 600 054

2.The State rep. by its
Inspector of Police (Law and Order)
SRMC Police Station
Avadi Commissionerate
Porur, Chennai

3.L.Priya

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS directing the respondents to produce the minor girl child S.Harshini, aged 10 years, before this Court and hand her over to the petitioner.



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For Petitioner : Mr.K.M.Ramesh
for Mr.J.Selvaraja

For R1 and R2 : Mr.R.Muniyapparaj
Additional Public Prosecutor

For R3 : Mr.M.V.Bibin Mahesh
for Mr.Suresh Kumar

ORDER

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

On 07.12.2022, we passed the following order:

“It is the case of the petitioner that he got married to the 3rd respondent on 26.08.2009 and through the wedlock, he has a daughter viz., S.Harshini (DOB : 05.11.2012); on account of marital discord, he got estranged from the 3rd respondent and he was visiting his daughter until recently. It is the grievance of the petitioner that the 3rd respondent has remarried one Karunakaran and the whereabouts of his daughter has not been divulged to him. On these allegations, the present habeas corpus petition has been filed.

2. Today, Mr.S.John Basco, Sub-Inspector of Police, T-15 SRMC Police Station (Mobile No.88256 84917), is present before this Court.

3. It appears that the petitioner has sent a complaint to the Commissioner of Police by post and has not lodged a formal complaint to the 2nd respondent police, in this regard.

4. Hence, we direct the petitioner to appear before the 2nd respondent and lodge a complaint, based on which, the



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2nd respondent police is directed to register a regular FIR for child missing and report to this Court on the next hearing date.

Post this matter on 14.12.2022.”

2. On 13.12.2022, this Court passed the following order:

“Pursuant to our order dated 07.12.2022, the petitioner gave a complaint, based on which, a case in SRMC Police Station Crime No.693 of 2022 has been registered on 08.12.2022 for “Girl Missing”.

2. Today, B.Indumathi, Sub-Inspector of Police, T-15, SRMC Police Station, was present. The police produced the 3rd respondent and the child before us. The petitioner was also present.

3. Mr.D.Padmanabhan, Advocate (Enrollment No.3673 of 2012) entered appearance for the 3rd respondent.

4. The learned counsel for the petitioner is directed to serve a copy of the petition, affidavit and typed set of papers on the learned counsel for the 3rd respondent.

5. When we enquired the 3rd respondent, she stated that she has got married to one Karunakaran on 03.08.2022 and is residing at No.205, Meyyammai Street, Porur, Chennai 600 116. Her Cell No. is 95517 27400.

Post on 20.12.2022 for counter affidavit, if any.”

3. On 20.12.2022, we passed the following order:

“Today, when the matter was taken up for hearing, Ms.B.Indumathi, Woman Sub-Inspector of Police, T-15, SRMC Police Station was present.



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2. The petitioner and his counsel were also present. However, the 3rd respondent was not present. Earlier, one Mr.D.Padmanabhan, Advocate (Enrollment No.3673 of 2012) entered appearance for the 3rd respondent. Today, one Mr.M.V.Bibin Mahesh, Advocate (Enrollment No.3120 of 2022 - Cell Phone No.72997 27094), submitted that he has been instructed by his senior Mr.Suresh Kumar, Advocate, to take a short adjournment on the ground that the 3rd respondent's daughter *viz.*, minor S.Harshini, is unwell.

3. The petitioner has filed an affidavit dated 15.12.2022 disclosing his income in order to demonstrate that he has necessary means to maintain the child. That apart, he has also stated that his mother-in-law *viz.*, Kalyani (mother of the 3rd respondent) is with him and that she will take care of the child. Mrs.Kalyani has also filed a supporting affidavit in this regard.

4. We find that the 3rd respondent seems to be adopting dilatory tactics by changing her counsel and not appearing before this court as undertaken by her. We, therefore, direct the respondent police to produce the 3rd respondent and the child before this court on 22.12.2022.

Post this matter on 22.12.2022.”

4. Today, Ms.B.Indumathi, Sub-Inspector of Police, T-15 SRMC Police Station, produced Seethapathy (petitioner), Priya (R3), Kalyani (R3's mother), Karunakaran and the child Harshini, before us.



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5. When we interviewed Priya, she stated that she got married to one Vinodkumar when she was hardly 17 years old and got divorce, after which, she married Seethapathy (petitioner) on 26.08.2009; through her marriage with Seethapathy, she has a girl child named S.Harshini (DOB : 05.11.2012).

6. It is the case of Seethapathy that his wife Priya and his daughter Harshini were with Priya's mother, Kalyani in door No.20/10, Badhrachalam Street, Porur, Chennai 600 116. It is his further allegation that Priya got an *ex parte* divorce in H.M.O.P.No.231 of 2020 on 12.11.2021 and thereafter, she has taken Harshini with her and became scarce. He has also alleged that Priya had remarried one Karunakaran on 03.08.2022. On these allegations, claiming custody of Harshini, the present habeas corpus petition has been filed.

7. Priya admitted the fact that she got married to Vinodkumar, got divorce from him, remarried Seethapathy, through Seethapathy, she gave birth to Harshini, divorced Seethapathy and has now married Karunakaran.



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When we enquired Karunakaran, he stated that he was earlier married to one Priya and got divorce from her four years back and has now got married to the person Priya (R3).

8. Kalyani (Priya's mother), stated that she has no grievance against her son-in-law Seethapathy and she is taking care of Harshini. She also stated that it will be in the interests of Harshini, if the custody is given to Seethapathy.

9. When we interacted with Harshini, we found that she was very much attached to her mother Priya (R3) and therefore, we are of the opinion that it will not be desirable to give the custody of Harshini to Seethapathy, at this juncture. However, as regards visitation rights, Priya (R3) and her husband Karunakaran stated that Kalyani can take Harshini on every Saturday commencing 31.12.2022 at 10.00 a.m. and drop her back by 05.00 p.m. on ensuing Sunday. It is made clear that this arrangement is purely a temporary one. If Seethapathy wants to work out his remedy with regard to the custody of Harshini, he has to approach the appropriate Court



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and the said Court may pass any order, taking into consideration the best interest of Harshini *albeit* the above interim arrangements.

With the above observations and directions, this habeas corpus petition stands closed.

[P.N.P., J.] [N.A.V., J.]

22.12.2022

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To

1.The Commissioner of Police
Avadi Commissionerate
Avadi, Chennai 600 054

2.The Inspector of Police (Law and Order)
SRMC Police Station
Avadi Commissionerate
Porur, Chennai

3.The Public Prosecutor
High Court, Madras



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