



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

H.C.P. (MD) No.48 of 2022

Packiyalakshmi .. Petitioner / Mother of the detenue

Vs.

1.The Superintendent of Police,
Thoothukudi District.

2. The Inspector of Police,
All Women Police Station,
Kovilpatti,
Thoothukudi District.

3.Velumani

4.Gomathy ... Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to direct the respondents to produce the body or person of the petitioner's minor son and daughter, namely, Uthayamithran, S/o.Chelladurai, aged about 4 years and daughter, namely, Mahithasri, D/o.Chelladurai, aged about 2 years before this Court and hand over the custody of them to the petitioner.

For Petitioner : Mr.S.Siva Ilayaraja

For R1 and R2 : Mr.S.Ravi
Additional Public Prosecutor

For R3 : Mr.Balaji



O R D E R

S.VAIDYANATHAN, J.

And

DR.G.JAYACHANDRAN, J.

[Order of the Court was made by **DR.G.JAYACHANDRAN, J.**]

The mother of two minor children has filed this present Habeas Corpus Petition alleging that the children were taken away by the respondents 3 and 4, who are her parents-in-law, taking advantage of the fact that her husband is in Army, placed at Punjab.

2.When the matter taken up for hearing, the husband of the petitioner along with two children is present before this Court through video conference and it is submitted that the petitioner herein has voluntarily deserted the family leaving behind the children on 28.12.2020 and thereafter, the children are taken care by the respondents 3 and 4 along with the husband of the petitioner. From the facts submitted by the counsels, it appears that due to family dispute, the petitioner herein has deserted the family as early as December, 2020. However the petitioner would state that she was driven out from the matrimonial home on 30.12.2020.

3. These are disputed facts, which has to be gone into through proper trial. As far as Habeas Corpus Petition is concerned, the Court has to look into whether the detainee is alive or in illegal custody. In this case, the children are alive and appeared before this Court through video conference and they are under the custody of their father. Hence, we are not in a position to hold that the children are in illegal custody. The father, who is an armed personnel, for the interest of the children had left the children under the custody of his parents, who are respondents 3 and 4. If the petitioner herein really wants the custody of the children, it is always open to her to approach the appropriate Court and seek for custody. This court is not inclined to extend its arms summarily where the facts of the case required trial.

4. With the above observation, this Habeas Corpus Petition stands dismissed.

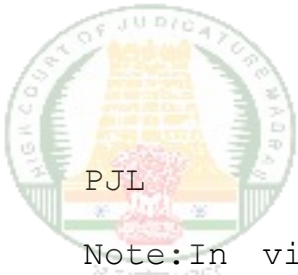
Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



PJL

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Superintendent of Police,
Thoothukudi District.

2. The Inspector of Police,
All Women Police Station,
Kovilpatti, Thoothukudi District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SIVAILAYA RAJA, Advocate (SR-1824[F] dated
20/01/2022)

H.C.P. (MD) No.48 of 2022
20.01.2022

GM(CO)
TR(15.02.2022) 3P 5C