



H.C.P.(MD) No.1383 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.08.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

H.C.P.(MD) No.1383 of 2022

Pandeeswari Brintha

... Petitioner

-VS-

1.The Superintendent of Police,
Tiruchirappalli District,
Tiruchirappalli.

2.The Inspector of Police,
Thottiyam Police Station,
Tiruchirappalli District.

3.Selvarani

4.Baskar

5.Govintharaj

... Respondents

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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of habeas corpus to direct the respondents 1 and 2 to produce the petitioner's minor children namely Pradeepa aged about 11 years and another son Pradeesh Pandi aged about 9 years in persons and bodies of detenu/detenu before this Court and hand over them to her custody.

For Petitioner : Mr.D.Karuppasamy

For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor for R1 and R2

ORDER

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

Pandeeswari Brintha, the petitioner herein (“Pandeeswari” for short) was already married to one Shankar and through the said wedlock, she has a child by name Bhavatharani, who is now studying in 11th standard. Pandeeswari was a stage performer and in connection with her avocation, she used to go for various stage performance to the Middle East, where, Baskar, the fourth respondent herein, was employed. Thus, Pandeeswari came in contact with Baskar and they both fell in love and got married sometime in the year 2004 in Madurai. Through the wedlock, Baskar and Pandeeswari have two children, Pradeepa (D.O.B:



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05.04.2011) and Pradeesh Pandi (D.O.B: 13.09.2013).

2. Earlier, while Pandeewari had gone abroad on her avocation, the two children were forcibly taken away by Baskar and were handed over to his sister Selvarani, who is a resident of Kallupatti, Alagar Head Post, Thottiyam Taluk, Tiruchirappalli District.

3. Therefore, Pandeewari filed H.C.P.(MD) No.936 of 2016, seeking custody of her two children in which, this Court passed the following order on 08.08.2016:-

“The second respondent produced two minor children of the petitioner, by name, Pradhiba, aged about 4 years and Pradeesh Pandi, aged about 3 years before us. The petitioner is the biological mother of the minors.

2. We have examined the petitioner. She informed us that there is an ongoing marital dispute between her and the fourth respondent. The fourth respondent is stated to be outside India.

3. The custody of the minors is given to the petitioner. The respondents 3 and 5 should not make any attempt to take the custody



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4. The Habeas Corpus Petition is closed with the above observation.”

4. It is the further allegation of Pandeewari that, sometime in the year 2018, Baskar once again forcibly took away the two children and has left them with his sister Selvarani (third respondent) and her husband Govintharaj (fifth respondent). On these allegations, the present habeas corpus petition has been filed.

5. Today, Mr.Parasuraman, Special Sub-Inspector of Police, Thottiyam Police Station, is present before this Court. The petitioner, Govintharaj (fifth respondent), Selvarani and the two children Pradeepa and Pradeesh Pandi are present before this Court.

6. When we enquired with the two children, they were not willing to go with Pandeewari as they have been living with Selvarani since 2018 at least. Both the children are studying in Sowdambika School in Thottiyam.



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7. The learned counsel Baskar (fourth respondent) submitted that Baskar left for Qatar on 25.08.2022 on employment. When we enquired with Govintharaj and Selvarani, they stated that they have been bringing up these two children as Baskar and Pandeewari had got estranged and in the absence of Baskar, they cannot take any decision with regard to the custody of the two children. However, they stated that they would provide free access to Pandeewari to meet her children in the weekends.

8. On a conspectus of the facts obtaining in this case, we find that there are disputed facts which cannot be decided in this petition. The custody of the two children with Baskar and his sister Selvarani in the given facts and circumstances of this case, cannot be said to be *per se* illegal for the issuance of a writ of habeas corpus.

9. Hence, this petition is closed with liberty to Pandeewari to approach the appropriate Court seeking guardianship and custody, if so advised. Until then, Pandeewari will be entitled to visit the two children during the weekends at the



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residence of Govintharaj and shall not take away the children from the custody of Govintharaj and his wife Selvarani. It is always open to Govintharaj to approach the local police for help if there is any attempt by Pandeewari to forcibly take away the children from them.

10. The aforesaid arrangement is purely temporary and it is open to the appropriate Court to pass any order (both interim and final) with regard to visitation rights without in any manner being influenced by what has been stated above. The appropriate Court can even modify the above order.

[P.N.P., J.] [R.H., J.]
26.08.2022

Index : Yes / No
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Tiruchirappalli.
- 2.The Inspector of Police,
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Tiruchirappalli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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and
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