



H.C.P.(MD) No.1374 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.1374 of 2022

Beula Rani Shiju

... Petitioner

-VS-

1.The State of Tamil Nadu,
Rep. by the Superintendent of Police,
Kanyakumari District at Nagercoil.

2.The Inspector of Police,
All Women Police Station,
Marthandam, Kanyakumari District.

3.Shiju

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a



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writ of habeas corpus to direct the respondents 1 and 2 to produce the petitioner's minor sons namely Erick B Shiju, aged about 12 years and Derik B Shiju, aged about 11 years, before this Court and hand over them to the petitioner's custody.

For Petitioner : Mr.K.Vamanan

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

ORDER

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

It is the case of the petitioner that she got married to the third respondent on 20.05.2010 and through the wedlock, she has two children Erick B Shiju, aged 12 years and Derik B Shiju, aged 11 years.

2. According to the petitioner, on account of marital discord, her husband got separated from her and several months ago, he took with him her second son Derik. It is the further allegation of the petitioner that on 08.08.2022, her husband forcibly took away Erick also from her custody, on these grounds, the petitioner has filed the present habeas corpus petition seeking custody of both the children.



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3. Today, Mr.S.Arul, learned counsel entered appearance on behalf of the third respondent.

4. Mr.Arul submitted that originally the petitioner and the third respondent were living with the children in the house of the third respondent in Tholadi Village, Vilavancode Taluk, Kanyakumari District. After the spouses got estranged, the petitioner took away Erick (elder son) to her parental home in Kollamcode Village. However, the two siblings were in touch with each other over phone. Sometime ago, Derik (younger son) informed his father (third respondent) that he is not able to contact his elder brother Erick and therefore, the third respondent went to Kollamcode Village in search of the petitioner and Erick. Finding that the petitioner and Erick were not there but in Chennai, the third respondent went in search of them but could not find them. Ultimately, according to the third respondent, he found Erick in the house of another person in Thiruvattar Village and therefore, he brought Erick with him and is having both the children.



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5. The learned counsel for the petitioner strongly refuted the aforesaid contention and stated that Erick was forcibly taken away on 08.08.2022 by the third respondent.

6. It is further alleged by the third respondent that the petitioner was having an affair with a person in Thiruvattar from where Erick was secured by the third respondent, which allegation is strongly denied by the learned counsel for the petitioner who submitted that the petitioner is working as a teacher in Excel Higher Secondary School in Thiruvattar. We do not want to go into disputed question of facts in a habeas corpus petition. Erick and Derik are school going children. Their custody with their father cannot be said to be *per se* illegal. Hence, this petition is closed with liberty to the petitioner to workout her remedy before the appropriate Court for custody and guardianship in accordance with law.

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

Index : Yes / No
Internet : Yes / No
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3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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and
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