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IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.71 OF 2022
WITH
CRIMINAL MISC. APPLICATION NO.608 OF 2022 (F)
IN
CRIMINAL WRIT PETITION NO.71 OF 2022

BRIAN RUDOLPH DONATO TAVARES ... Petitioner

Versus

STATE OF GOA THR., MARGAO
POLICE STATION AND ANR. ... Respondents

Mr Brian Rudolf Donato Tavares *in person*.

Mr Nikhil Vaze, Additional Public Prosecutor *for Respondent No.1*.

Mr Abhijit Sarwate with Mr Vibhav Amonkar, Advocates *for Respondent No.2*.

**CORAM: M.S. SONAK &
VALMIKI SA MENEZES, JJ.**

DATED: 10th April, 2023

ORDER: (Per Valmiki Sa Menezes, J.)

1. By this writ petition under Article 226 of the Constitution of India, the Petitioner seeks a writ of habeas corpus against Respondent No.2 who is his estranged wife seeking directions to produce their children, Miss Alicia and Master Galvin before this Court, and to further direct Respondent No.2 to hand over their custody to the Petitioner in order that he may take his children back to their country of origin, United States of America.

*Necessary
corrections
carried out in
terms of order
dated
25.04.2023 in
CRMA No. 299
of 2023 (F)*

2. It is the Petitioner's case that he and his wife, Respondent No.2 are citizens of the United States of America and were last residing together in Los Angeles, United States, until about August 2017. It is further the Petitioner's case that Respondent No.2 took their two children with her to Pune, Maharashtra, whilst they were on holiday in Goa, somewhere around ~~September 2017~~ ^{4th August 2017}, and since then, the Respondent No.2 has refused to return with the Petitioner, either to the United States of America ~~or back to Goa~~, and continues to reside at Pune with the two minor children, at her mother's house. It is his case that despite several requests, Respondent No.2 steadfastly refuses to return the Petitioner's children to their home in Los Angeles, United States of America, as a consequence of which, the Petitioner was constrained to approach the superior Court of California, County of Los Angeles on ~~26.10.2016~~ ^{26.10.2017}, with a petition for divorce and for custody of their minor children; that by order dated ~~26.10.2016~~ ^{26.10.2017}, the Superior Court at California granted an interim custody order to the Petitioner, giving the Petitioner temporary custody of their children. It is further the Petitioner's case that Respondent No.2 has also filed a divorce petition under the Indian Divorce Act, 1869 before the Family Court in Pune on ~~12.07.2017~~ ^{12.10.2017} which plaint has now been returned by the Family Court at Pune under order dated 04.12.2018, directing the Respondent No.2 to present the same in an appropriate Court having jurisdiction over the matter at Goa.

3. The Petitioner further avers that the order dated 04.12.2018 of the Family Court was challenged by Respondent No.2 before the High Court of Bombay at its Principal Seat at Mumbai which has now been converted

under orders of that Court, to an Appeal from Order and the same is pending adjudication.

4. In the meantime, the Petitioner filed Writ Petition No.1484/2018 against Respondent No.2 before the High Court of Judicature at Bombay at its Principal Seat in Mumbai, seeking a writ of habeas corpus against Respondent No.2 for the very same reliefs that have been sought in the petition before us. In Writ Petition No.1484/2018, the High Court, by its Judgment dated 27.06.2018 was pleased to dismiss the petition, expressly reserving the plea of the Petitioner of lack of jurisdiction and competence of the Family Court, Pune, directing the Petitioner to approach the Family Court to seek variation or vacation of the order passed by that Court on 13.10.2017, by which interim custody of the two children was granted to Respondent No.2. The only change of circumstance that is now pleaded in this petition, for approaching the High Court of Bombay at Goa, was that the Superior Court at California had, by order dated 23.01.2019, granted the Petitioner full custody of the minor children and directed the Respondent No.2 to hand over their children to the Petitioner. It is further the Petitioner's contention that this Court would have jurisdiction to issue an appropriate writ of habeas corpus to enforce the orders of the Courts in the United States; the Petitioner claims that the High Court of Bombay at Goa would have the territorial jurisdiction to grant such a writ, on the sole contention that the Petitioner and Respondent last resided together at the flat of the Petitioner's mother at Margao, Goa ~~until~~ ^{on} 04.08.2017, when his children were removed therefrom and taken by the Respondent No.2 to Pune.

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5. Respondent No.2, on being served notice of this Court has filed a detailed affidavit in reply dated ~~13.08.2021~~ ^{13.08.2022} opposing the admission of the petition and raising a preliminary ground of territorial jurisdiction of this Court, more so in the light of the fact that the Principal Bench at Bombay had dismissed the earlier Writ Petition No.1484/2018 filed by the Petitioner at Mumbai on 27.06.2018, when, at the relevant time the children were residing at Pune.

During the course of the hearing of this preliminary objection, Shri Abhijit Sarwate, learned Advocate for Respondent No.2 has made a statement before us that the Petitioner's children Miss Alicia and Master Galvin are in fact residing with the Respondent No.2 at Pune and not at Goa, and on that count, the Petitioner would have to file the present petition at the Principal Seat of the High Court at Mumbai.

6. After hearing the petition for some time on the preliminary point of territorial jurisdiction, we expressed our view that in the light of the averments made by the Petitioner in his earlier Writ Petition bearing No.1484/2018 filed at the Principal Seat at Mumbai and considering the findings of the Court whilst dismissing that petition on 27.06.2018, the present petition would not lie at Goa, and it would be appropriate if the Petitioner withdrew the same and filed a fresh petition for the reliefs sought before us, at the Principal Seat of this High Court at Mumbai. The Petitioner expressed his desire to withdraw the present petition with liberty to file the same, for reliefs sought herein before the Principal Seat of this High Court at Mumbai.

7. Whilst withdrawing the petition, the Petitioner expressed to this Court that he has not met his children since August 2017 and requested the assistance of the Court to work out an interim arrangement in establishing contact with his children, for a certain period of time, until he presents a fresh petition before the Principal Seat at Mumbai. Accordingly, with the assistance of the learned Counsel for Respondent No.2, who, after taking instructions from Respondent No.2, the following interim arrangement has been worked out and is being recorded as part of this order by consent of the parties and without prejudice to their contentions before any Court or in any pending or future proceedings that may be taken up by them.

8. The interim arrangement, by consent of the parties shall be as under:-

- A. It is agreed by the Petitioner and Respondent No.2 that as a means to establish contact with his children Miss Alicia and Master Galvin, the Petitioner will interact with his children on Tuesdays and Thursdays between 7:00 p.m. and 8:00 p.m., over a video conferencing call, either on WhatsApp or Zoom or any other such platform available to the parties. It is understood by the parties that neither of them would adopt any rigid attitude towards this arrangement, in terms of the duration of timing specified for the chat.
- B. In addition to the chat time through video conferencing referred to in clause (A) above, the Petitioner shall visit and spend time with his children Miss Alicia and Master Galvin at

Pune on 29 April 2023, 8 May 2023, 23 May 2023, 3 June 2023, 17 June 2023 and 23 June 2023; the visits and interaction between the Petitioner and his children will take place at the Child/Family Centre within the premises of the Family Court at Pune between 12:00 p.m. (noon) and 3:00 p.m. on these dates. We expect the parties to be flexible in their approach to this arrangement both in terms of the timings and the venue, if there is any impediment to holding these interactions at the Family Court premises in Pune.

- C. The Petitioner has agreed to gift to each of his children, an amount of ₹25,000/- in cash when he visits them at Pune either on 29.04.2023, 08.05.2023 or 23.05.2023, which amount may be used by his children in such manner as they would wish; the Respondent No.2 shall issue a receipt in acknowledgement of having received these amounts, which shall be presented to the Registry of this Court, which shall refund to the Petitioner the amount of ₹50,000/- deposited before this Court under order dated 04.07.2022.
- D. The Petitioner and Respondent No.2 have agreed to cooperate with each other whilst working out and implementing the above arrangement, and they undertake to, in the interest of their children to maintain cordiality during the interaction between the Petitioner and his children either by video conference or when he meets them in person at Pune on the designated dates.

E. The present petition is withdrawn by the Petitioner with liberty to present a fresh petition for similar reliefs before the Principal Seat of this Court at Mumbai; the petition shall be filed on or before 30.06.2023 until which time the arrangement recorded hereinabove shall be in operation. Thereafter, the Petitioner is at liberty to seek continuation of the arrangement or variance thereof or any such reliefs as he pleases, before the Principal Seat at Mumbai.

9. This petition is hereby dismissed as withdrawn with the aforesaid liberty granted by us and with the interim arrangement specifically recorded hereinabove. Ordered accordingly.

VALMIKI SA MENEZES, J.

M.S. SONAK, J.

JOSE
FRANCISCO
DSOUSA

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