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H.C.P.No.393 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

H.C.P.No.393 of 2023

Mohanraj

S/o.Ponnusamy

.. Petitioner

Vs.

1. The Superintendent of Police
The Nilgiris District

2. The Inspector of Police
Masinagudi Police Station
The Nilgiris District

3. Sowgath Ali .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the second respondent to produce the petitioner's minor child Buva Karki, son of Mohan Raj, aged about 4 years before this Court from the custody of 3rd respondent and hand over to the petitioner.

For Petitioner	:	Mr.M.Vijayaragavan
For Respondents	:	Mr.R.Muniyapparaj
		Additional Public Prosecutor
		Assisted by
		Mr.M.Sylvester John, Advocate

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ORDER

[Order of the Court was made by M.SUNDAR, J.,]

Captioned 'Habeas Corpus Petition' ['HCP' for the sake of brevity] has been filed stating that petitioner's four year old son has been taken away by the third respondent (private respondent).

2. Mr.M.Vijayaragavan, learned counsel on record for petitioner and Mr.R.Muniyapparaj, assisted by Mr.M.Sylvester John, learned State Additional Public Prosecutor, who accepts notice on behalf of respondents (official respondents) are before us.

3. Learned Prosecutor submits that the petitioner lodged a complaint with the jurisdictional police station on 13.01.2023 and jurisdictional police commenced investigation on the same. It is submitted by learned Prosecutor that preliminary investigation brings to light that petitioner's wife one Salma died on 17.08.2020, thereafter there appears to have been an arrangement between the petitioner and his in-laws, whereby the petitioner's first son (from his wedlock with Salma) named Rajanithin, now aged 7 years is to be with the petitioner and their second son Buva Karki, now

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aged 4 years is to be with his in-laws. To be noted, the third respondent (private respondent) is father-in-law of the petitioner.

4. Learned Prosecutor submits on further instructions that it came to light that the second son of the petitioner (absentee) is now with the third respondent (petitioner's father-in-law). Learned Prosecutor placed before us some photographs and a video clipping to demonstrate that absentee is with the parents-in-law of the petitioner i.e., grandparents.

5. Learned counsel for petitioner submits that under Section 6 of the Hindu Minority and Guardianship Act, 1956, the petitioner is the natural guardian. We deem it appropriate to not to express any opinion on this submission as that would be the domain of the Court vested with jurisdiction qua guardianship.

6. From the narrative thus far, two aspects of the matter emerge and they are as follows:

i) It is clearly a case of a tussle for custody of a minor child between an individual and his parents-in-law, the individual's spouse having died in 2020;



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ii) It is not a case of illegal custody or illegal detention as

absentee is with his natural grandfather/grandparents.

7. Therefore, we do not intend to embark upon a habeas corpus legal drill. We deem it appropriate to close the captioned Habeas Corpus Petition, however, leaving open all questions and preserving all the rights and contentions of the petitioner, third respondent and all other parties concerned if proceedings for guardianship or any other collateral proceedings are commenced in appropriate Court / Courts or Forum/Fora.

Sequitur is captioned HCP is disposed of as closed albeit preserving all the rights of the parties in the aforesaid manner.

(M.S.,J.)

(M.N.K.,J.)

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Index : Yes / No

Neutral Citation : Yes / No

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To

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The Nilgiris District
2. The Inspector of Police
Masinagudi Police Station
3. The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

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