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HCP No.813 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.813 of 2023

C.Ramanathan
S/o.R.M.Chandrasekaran

.. Petitioner

Vs.

1. The Commissioner of Police
Chennai City Police
Chennai.
2. The Inspector of Police
W-19, All Women Police Station
CSR No.27 of 2023
Adyar, Chennai.
3. S.Meenakshi
W/o.S.Sambandam
4. S.Sellammai
D/o.S.Sambandam
5. S.Adaikkammai
D/o.S.Sambandam

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the respondents 1 and 2 herein to secure the petitioner's daughter xxxxx, aged 11 years from the illegal



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custody of the respondents 3 to 5 and produce her before this Hon'ble Court for the entrustment of the lawful custody to her father / sole nature guardian / petitioner herein.

For Petitioner : Mr.N.Prateik
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
for R1 and R2

ORDER

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

This order will now dispose of the captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of convenience and clarity].

2. This order has to be read in conjunction with and in continuation of earlier proceedings made by this Court on 21.06.2023 which reads as follows:

'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 25.05.2023, which reads as follows:

'The petitioner is the father of the detenue, aged about 11 years. The detenue's mother passed away due to COVID-19. After the demise of her mother, the detenue has been in the care and custody of her maternal grandmother and aunt. The



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petitioner has approached this Court after 1½ years claiming that he is the natural guardian of the detenue and that he must be given her custody.

2 Taking into account the situation obtaining in this case, the petitioner is permitted to visit the detenue every Sunday, pending disposal of this habeas corpus petition.

3 Further, this Court refers this matter to the Mediation and Conciliation Centre attached to this Court. The parties shall appear before the Mediation & Conciliation Centre on 05.06.2023.

Post on 19.06.2023.'

2. Today, the petitioner, senior counsel Mr.R.John Sathyan, instructed by petitioner's counsel on record Mr.P.Divakar, Mr.E.Raj Thilak, learned State Additional Public Prosecutor for Respondents 1 and 2 (official respondents), Ms.S.P.Arthi, learned counsel for Respondents 3 to 5 and the petitioner's daughter 'xxx' [we are masking the name and we shall be referring to the petitioner's daughter as 'minor child' for the sake of convenience and for obvious reasons] are present in Court. Pursuant to aforementioned earlier proceedings, mediation sittings were held in 'Tamil Nadu Mediation and Conciliation Centre under the aegis of this Court' ('TNMCC' for the sake of brevity) but this Court is informed that the same did not fructify into a settlement. We request TNMCC to send a report to this Court by next listing.

3. Today, both sides i.e., private parties on both sides



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submitted that it would be desirable to try mediation for a second time.

4. In the light of consent of both sides (private parties on both sides), the matter is now referred to Mediation. Before we do that we make it clear that fourth respondent will now stand excluded from the mediation proceedings. The reason is, we are informed that fourth respondent is residing in London, United Kingdom. Therefore, mediation will be qua petitioner on one side and Respondents 3 and 5, mother-in-law and sister-in-law of petitioner on the other side.

5. As the matter is being referred to mediation, we refrain from saying anything about submissions made by learned counsel on both sides.

6. The earlier proceedings dated 25.05.2023 made by Hon'ble predecessor Bench will continue to operate.

7. The following order is made:

i) The captioned matter is referred to mediation and mediation shall be by Ms.D.Nagasaila, Advocate {Old No.123, New No.255, 3rd Floor, Hussaina Manzil, Angappan Naicken Street, Parrys, Chennai 600 001. (Mobile No:94440 83494) (E-mail: nagasailad@gmail.com)};

ii) The aforementioned learned Mediator has been agreed upon by both sides;

iii) It is open to aforementioned learned Mediator to hold mediation sittings either in Home office, her office, any other neutral venue or TNMCC if the need arises. TNMCC shall do the needful if a request in this regard is made by the



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learned Mediator;

iv) Both sides very fairly submitted that they would pay honorarium to the learned mediator and it shall be Rs. 50,000/- [Rupees Fifty Thousand only] by the petitioner and Rs. 50,000/- [Rupees Fifty Thousand only] by respondents 3 and 5 together (one lakh in all). Depending on the trajectory the matter takes, subject to consent of parties, this Court may consider further honorarium;

v) We request the learned Mediator to send a report to this Court as expeditiously as her professional work would permit, preferably within a fortnight from today i.e., by 05.07.2023.

List on 05.07.2023.'

3. Short forms, short references and masked references used in the earlier proceedings will continue to be used in the instant order also for the sake of convenience and clarity.

4. Today, Mr.N.Prateik, learned counsel on record for petitioner, Mr.E.Raj Thilak, learned Prosecutor for official respondents (respondents 1 and 2) and Ms.S.P.Arthi, learned counsel for respondents 3 to 5 are before us.



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5. Adverting to our earlier proceedings dated 21.06.2023, learned counsel for petitioner and learned counsel for respondents 3 to 5 submit in one voice that the mediation was productive and it has fructified into a memorandum of compromise dated 17.07.2023. To be noted, final report of learned Mediator dated 18.07.2023 together with memorandum of compromise dated 17.07.2023 has been placed before us and a scanned reproduction of the same is as follows:

IN THE HIGH COURT (at JUDICATURE AT MADRAS)
(SPECIAL ORIGINIAL JURISDICTION)

H.C.P. No. 813 of 2023

E.Parasuraman	Petitioner
Vs	
The Commissioner of Police Chennai City Police, Chennai	Respondent

FINAL REPORT OF THE MEDIATOR

This Hon'ble Court by its order dated 21.06.2023 referred the above-mentioned matter for mediation. The first mediation meeting was held at 5 pm on 03.07.2023. Petitioner and Respondents 3 and 5 were present. The minor child also accompanied the Respondents. The counsel for both parties were also present.

At the end of the discussion, both parties agreed that they would file further time to explore possibilities of arriving at some mutual agreement in respect of custody and visitation rights keeping in mind the interest of the minor child. A second meeting was held at 5 pm on 17.07.2023, at the end of the meeting both parties arrived at a settlement and the same was reduced to writing in a Memorandum of Compromise dated 17.07.2023 and duly signed by the parties and their counsel in my presence. The said Compromise Memo is annexed to this report.

Dated at Chennai this the 18th day of July, 2023.

B. Nagarathinam
B. Nagarathinam
Advocate, Mediator



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BEFORE THE HIGH COURT OF JUDICATURE AT MADRAS
(Special Original Jurisdiction)

H.C.P. No. 813 of 2023

RAMANATHAN

...Petitioner

-Vs-

The Commissioner of Police
& Others

...Respondents

MEMORANDUM OF COMPROMISE

The above HCP was filed by the petitioner seeking custody of his minor daughter Meenu Vaishnavi, born on 16.02.2012. The Petitioner and Respondents 3 to 5 in the above case was referred to mediation by this Hon'ble Court by order dated 21.06.2023. Pursuant to the concerted efforts taken by the mediator, the parties, the respective counsels, the dispute between the Petitioner and the Respondents 3-5 herein which is the subject matter of the above case is resolved in the following mutually agreed terms:-

- A. Considering the welfare of the child, the Parties hereto have unconditionally consented to keep aside their differences and work towards the welfare of the child. The arrangements that the parties have consented to and as recorded herein, shall be in force for a period of one year, at the end of which term, the parties shall reassess the arrangement and shall, keeping the best interest of the child in mind, either mutually agree to continue the terms or make suitable modifications, as may be beneficial for the child.
- B. The Petitioner/father is desirous of paying the school fees for the minor child, which he may do directly to the said institution. In addition thereto, he shall be at absolute liberty to expend for other facets of the child's living and also gift her anything that he may deem appropriate. He shall, however, ensure that he

[Signature]

S. Meenakshi
S. Adaittamani



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does not smother the child with excessive or age inappropriate gifts, only to ensure the wellbeing of the child.

- C. The Petitioner may visit the child at Chennai without any restriction, subject, however, to the school and other schedules of the child. In the event of the Petitioner so intending to visit the child, he shall intimate the Respondent, 5 at the contact number available with him, of such intention to visit, at least two days earlier. Such visitation shall be had at a common place to be decided by the parties at the relevant point in time. During such visitation, the petitioner shall be authorized to take the child out with him, including overnight stay on Saturdays, subject however, to the child's schedules. In the event of such overnight stay with the father, the child will be dropped back latest by 9 pm on Sundays.
- D. The Respondents 3 to 5 are not fixing any cap on the amount of time that the Petitioner may spend with the child only to encourage the child to interact with her father. The Petitioner also asserts that he is conscious of the responsibilities of a father and hence shall not take undue advantage of such timeliness not being fixed and shall limit his visiting period to the comfort of the child.
- E. The Petitioner shall have custody of the child during Diwali and Pongal holidays. Similarly, the petitioner shall have custody of the minor child for 50% of the summer holidays, such time to be mutually decided by the Parties. The child shall be with her father through the pongal holidays. During all other holidays beyond 4 days, excepting winter holidays, the Petitioner shall be entitled to custody of the child. The minor child shall participate in the two *Meezhhas* that are hosted annually at the Petitioner's native village, subject to such *Meezhhas* falling on a school holiday.
- F. These schedules, unless impaired by circumstances beyond the control of either party to which case the parties will review and reassess the arrangement, shall be strictly adhered to by the parties. Changes in the schedule agreed hereto, will require appropriate substitutions of times of equal length, subject to mutual approval.

[Signature]

*S. Meenakshi
S. Adairammani*



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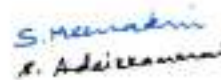
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- G. The parties expressly agree that except in the events of illness, injury, or other form of emergency, they will not deny the child access to the other party.
- H. The Respondents 3 & 5 shall try not to schedule activities which conflict with the Petitioner's time with the child.
- I. Additional to physical interaction, other methods of access shall be allowed with the child including telephone contact, e-mail and other virtual means that may be available.
- J. The parties acknowledge that while there may be disagreements between them, they will not permit them to be inflicted upon the child. The parties further believe that the child should hold a positive image of both the parties, and the parties will work towards that end.
- K. The parties further agree that, should any serious dispute arise between them, or relating to any aspect of the child's welfare, or on implementation of any of the terms agreed herein, they shall first approach their respective lawyers to try and resolve the issue amicably. In the unfortunate event of the parties being unable to so resolve the issue, they shall be at liberty to approach the Court to seek appropriate directions.

Dated at Chennai on this the 17th day of July, 2023


Petitioner


Counsel for Petitioner


Respondents 3-5


Counsel for Respondents 3-5

6. In the light of the narrative thus far, learned Prosecutor for a change has become formal party though this was originally a habeas drill on hand.

7. To be noted, we have scanned and reproduced the final report of learned Mediator and annexed memorandum of compromise at the common



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request of learned counsel for petitioner and learned counsel for private respondents 3 to 5.

8. We place on record our appreciation for learned Mediator for the effort and exercise.

9. All in all net sequitur is, there is a happy ending to what was originally started as habeas legal drill and curtains are drawn on the captioned HCP.

10. Captioned HCP disposed of as closed recording the aforesaid stated position of parties and the trajectory the matter has taken.

(M.S.,J.) (R.S.V.,J.)
18.07.2023

Index : Yes / No
Speaking / Non-speaking order
Neutral Citation : Yes / No.

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To

1. The Commissioner of Police
Chennai City Police
Chennai.
2. The Inspector of Police
W-19, All Women Police Station
CSR No.27 of 2023
Adyar, Chennai.
3. The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

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H.C.P.No.813 of 2023

18.07.2023