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H.C.P.No.933 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

Coram

**THE HONOURABLE MR.JUSTICE M.SUNDAR
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

H.C.P.No.933 of 2023

Francie Salmona
W/o.Imbaraj

.. Petitioner

VS

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

2.The Inspector of Police,
All Women Police Station,
Hosur, Krishnagiri District.

3.Inbaraj Alfred
S/o.Jayapal Nadar

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents 1 and 2 herein to secure and produce the body and person John Michael Steve, the petitioner's son, minor aged 5 years before this Court from the custody of the third respondent and hand over to the petitioner.



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For Petitioner : Mr.U.Manogar

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor [R1 & R2]
Mr.C.Mohanraj [R3]

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 brevity and convenience].

2. The factual matrix in a nutshell is that the petitioner and third respondent (to be noted third respondent is a private respondent) are spouses and their marriage was solemnised on 25.08.2011; that from this wedlock two children 'xxx' a eight year old daughter and 'yyy' a 5 year old son were born (we are masking the names of the children and we shall be referring to them as 'daughter absentee' and 'son absentee' for the sake of convenience); that there is marital discord between petitioner and third respondent; that petitioner has already initiated proceedings in the jurisdictional Family Court, viz., District Court, Chengalpet, vide O.P.No.89 of 2023; that we are informed that this original petition is for judicial separation; that it is the case of petitioner that on 26.04.2023, the



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son absentee was forcibly taken away from her parental home in Hosur by third respondent and four or five unidentified persons; that the petitioner has lodged a complaint with the jurisdictional police station (second respondent); that the complaint has been registered as Crime No.45 of 2023 for alleged offences under Sections 498(A) and 363 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity]; that third respondent has obtained anticipatory bail vide order dated 18.05.2023 in CrI.O.P.No.10525 of 2023 on the file of this Court; that the captioned HCP has been filed in this Court under these circumstances on 23.05.2023; that Hon'ble Predecessor Bench (Vacation Bench) issued notice on 25.05.2023.

3. Today, petitioner, petitioner's counsel Mr.U.Manogar, Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing on behalf of Respondents 1 and 2 (official respondents) instructed by Ms.K.Meenatchi, Sub-Inspector of Police, All Women Police Station, Hosur, third respondent (along with son absentee) and third respondent's counsel Mr.C.Mohanraj are present before this Court. We are informed that the daughter absentee is with the petitioner.



4. From the submissions made at the bar, we find that there are serious contestations and factual disputes. While the petitioner produced fee receipts to show that petitioner has paid fee for the current academic year for I Standard in a School in Hosur viz., Vijay Vidyalaya, Hosur, for the son absentee, the respondent shows a fee receipt for payment of fee in a School in Chennai viz., St.Michaels Academy, Adyar but we also notice that this is for the academic year 2021-2022 i.e., previous academic year. This is the reason why we are of the view that there are disputed facts which may require evidence to be let in and appreciated.

5. To be noted while setting out the factual matrix in a nutshell supra, we have captured the trajectory the matter has taken thus far also.

6. In the light of the narrative thus far, it emerges clearly that it is a case of marital discord between petitioner and third respondent and a further case of tussle between two parents for custody of a minor child i.e., son absentee. Therefore, we make the following order:

- (a) We are informed that O.P.No.89 of 2023 on the file of District Court, Chengalpet, is scheduled to be listed on 27.07.2023. We are informed that third respondent before



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us is the sole respondent and has entered appearance through counsel. With the consent of petitioner and third respondent, we request learned District Judge to advance the hearing to 03.07.2023, Monday. Petitioner and respondent i.e., petitioner and third respondent before us along with son absentee shall be present before learned District Judge for further adjudication;

- (b) It is open to the parties to move a suitable application before learned District Judge, Chengalpet regarding custody of son absentee;
- (c) It is also open to the parties to move the jurisdictional GAWA Court (to be noted, GAWA stands for Guardian and Wards Act, 1890) but we express no opinion this course of action;
- (d) The criminal complaint i.e., Crime No.45 of 2023 on the file of second respondent shall proceed on its own merits and in accordance with law. The same shall be carried to its logical end as expeditiously as the official business of second respondent would permit;
- (e) If any of the parties do not appear before learned District



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Judge, Chengalpet, on 03.07.2023 in breach of this consent order, it is open to learned District Judge, Chengalpet, to take suitable action in law.

- (f) Learned District Magistrate, Chengalpet, shall deal with the matter and prayer before the Court on its own merits and in accordance with law untrammelled by this order, which has been made for the limited purpose of a habeas corpus legal drill. To be noted, this will apply to GAWA Court also, if the Court is moved.

7. Captioned HCP is disposed of as closed making it clear that we have not expressed any view or opinion on the merits of the matter *qua* matrimonial proceedings, custody prayer (if any before the concerned Court) and pending criminal case/investigation. We also make it clear that all the rights and contentions of petitioner, third respondent and any one concerned with issues in case on hand are preserved for being canvassed before Court/s/Fora/authorities concerned and this order will neither be an impediment nor an impetus when so canvassed.



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We draw the curtains on captioned HCP i.e., captioned HCP is disposed of as closed albeit with aforementioned directions, observations and preservation of rights.

[M.S., J.] [R.S.V., J.]
28.06.2023

Index : Yes/No
Neutral Citation : Yes/No
gm

P.S.-I:

The uploaded copy of this order in the High Court of Madras website would suffice for all concerned to comply with the directives issued herein.

P.S.-II:

Registry to communicate this order forthwith to concerned District Judge, Chengalpet, on whose file O.P.No.89 of 2023 is pending.

To

- 1.The District Judge,
Chengalpet.
[O.P.No.89 of 2023]
- 2.The Superintendent of Police,
Krishnagiri District,
Krishnagiri.
- 3.The Inspector of Police,
All Women Police Station,
Hosur, Krishnagiri District.
- 4.The Public Prosecutor,
High Court, Madras.



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

gm

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