



H.C.P.No.991 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.991 of 2023

Revathy
W/o.Sathish @ Franklin

.. Petitioner

Vs.

1. The State of Tamil Nadu
Represented by
The Superintendent of Police
Salem City, Salem.
2. The State of Tamil Nadu
Represented by
The Inspector of Police (L&O)
Pallapatty, Salem District.
3. Mr.Sathish @ Franklin
S/o.Solomon

..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 herein to produce the petitioner's minor daughter xxxxx, D/o.Mr.Sathish @

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Franklin, Hindu, Female, aged about 3 years, from the illegal custody of the 3rd respondent before this Hon'ble Court and hand over the minor child to the petitioner.

For Petitioner : Mr.S.N.Arunkumar
representing Mr.A.Rajaraman
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

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. The nucleus of the captioned HCP is petitioner's daughter 'xxxxx' [we are masking the name and we shall be referring to the petitioner's daughter as 'absentee' in this order for the sake of convenience and clarity].

In the case on hand, the case of the petitioner is, that she married third respondent on 13.12.2018 and absentee was born from her wedlock with third respondent. Thereafter, according to the petitioner there was matrimonial discord and she moved out of matrimonial home along with the absentee in 2021. It is the further case of the petitioner that she sent the absentee voluntarily with third respondent for two weeks but thereafter,



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third respondent switched off the phone and did not return the absentee necessitating a police complaint dated 23.04.2023 and the police rescinded the position qua the absentee on the same day.

3. Mr.S.N.Arunkumar, learned counsel representing the counsel on record for habeas corpus petitioner submits that thereafter, the third respondent again took away the absentee necessitating another police complaint vide CSR No.286 of 2023.

4. In the light of the narrative thus far, it is clear that eye of the storm is matrimonial discord between the petitioner and third respondent and it is a case of tussle between two parents for custody of their minor child. A tussle for custody for their minor child between two parents has to necessarily go before jurisdictional GAWA Court. To be noted, 'GAWA' stands for 'Guardians and Wards Act, 1890'.

5. Considering the facts and circumstances of the case on hand and in the light of the submissions made including submission made by Mr.E.Raj Thilak, learned Additional Public Prosecutor who accepted notice for respondents 1 and 2 on our directions, it comes to light that it is a case for jurisdictional GAWA Court.



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6. Therefore, without expressing any view or opinion on the merits of the matter, leaving open all questions and preserving all the rights and contentions of the petitioner, third respondent or anyone concerned with the matter, we leave it open to the petitioner to move the jurisdictional GAWA Court. Though obvious, we make it clear that learned GAWA Court / Judge shall consider the matter on its own merits and in accordance with law uninfluenced or untrammelled by this order which has been made for the limited purpose of disposing of the captioned HCP.

7. Captioned HCP is disposed of as closed albeit preserving all the rights of the parties in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

13.06.2023

Index : Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No

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To

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

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