



H.C.P.No.1085 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1085 of 2023

Divya Priyadharshini
W/o.Mr.S.Praveen Kumar

.. Petitioner

Vs.

1. The Commissioner of Police
Vepery, Chennai-600 007.
2. The Inspector of Police
W-24, All Women Police Station
Teynampet, Chennai-600 018.
3. Mr.S.Praveen Kumar
Door No.1, 24/3, Appadurai Street
Seethammal Colony,
Teynampet, Chennai-600 018.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the 2nd respondent to produce the petitioner's minor child xxxxx, 1 1/2 years old before the Hon'ble Court from the custody of the 3rd respondent and handover the

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child to the petitioner.

For Petitioner : Mr.T.M.Mano
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
For R1 and R2
Mr.K.Thilageswaran
for R3

ORDER

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

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

2. Factual matrix in a nutshell is that HCP petitioner is married to third respondent (to be noted, third respondent is a private respondent); that the date of marriage is 18.10.2020; that HCP petitioner and third respondent were blessed with a child from wedlock on 25.11.2021 (girl child); that there is matrimonial discord between the petitioner and third respondent; that it is the case of the petitioner that her '1 ½ years old girl child' [hereinafter 'absentee' for the sake of convenience and clarity] was forcibly taken away by third respondent and other members of his family on



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07.03.2023; that in these circumstances, captioned HCP has been filed in this Court on 15.06.2023.

3. Issue notice.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for respondents 1 and 2 (official respondents) and Mr.K.Thilageswaran (Enrol.No.1760/2002) with address for service at No.308, II Floor, Thambu Chetty Street, Chennai-600 001 (Mobile No.9841952512) accepts notice for third respondent.

5. Learned Prosecutor, submits, on instructions (instructed by Ms.P.Sasikala, W24, All Women Police Station, Teynampet, Chennai) that the absentee is with third respondent and absentee is very much available at the address of third respondent which is in Teynampet, Chennai.

6. To be noted, the address / residence of the petitioner is also in Chennai.

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7. Considering the facts and circumstances of the case, we are of the view that this is a case of matrimonial discord and tussle between two parents for custody / guardianship of a minor child. Therefore, we are of the view that it would be appropriate for the jurisdictional GAWA Court (which is exercising jurisdiction in matters of this nature) to decide the issue. To be noted, 'GAWA' stands for 'Guardians and Wards Act, 1890'.

8. Be that as it may, considering the facts and circumstances of the case, we deem it appropriate to make the following order:

(a) The petitioner, third respondent along with the absentee shall present themselves before jurisdictional Magistrate [We are informed that the jurisdictional Magistrate is Metropolitan Magistrate No.XVIII, Saidapet] tomorrow (27.06.2023) by 2.30 p.m.;

(b) Learned counsel for third respondent undertakes that third respondent shall co-operate with the jurisdictional police and present himself along with absentee before jurisdictional Magistrate without resisting or causing any



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other form of impediment in this exercise;

(c) Learned jurisdictional Metropolitan Magistrate No.XVIII, Saidapet, is requested to record statements of parties in accordance with law;

(d) Learned counsel for petitioner and third respondent submit that jurisdictional GAWA Court shall be Hon'ble single Judge of this Court exercising GAWA jurisdiction;

(e) Learned counsel for petitioner submits that he would move GAWA Court at the earliest and learned counsel for third respondent submits that he would accept notice for third respondent (whatever rank he may be arrayed as in the GAWA Court) without insisting on service of notice in usual mode on the third respondent;

(f) As jurisdiction of GAWA Court i.e., Hon'ble single Judge of this Court is not subjected to contestation, there will be no contest on the jurisdiction (territorial or otherwise) as regards GAWA Court is concerned;



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(g) Hon'ble single Judge presiding over the GAWA Court is requested to decide the matter on its own merits and in accordance with law without treating this order either as an impetus or as an impediment for the GAWA Court legal drill. Though obvious, we make it clear that this order will apply to any interim order which the GAWA Court deems appropriate to make;

9. Though obvious, before dropping the curtains on the captioned HCP, we make it clear that all the rights and contentions of all parties more particularly, petitioner, third respondent and any other person concerned with this matter are preserved for being agitated in GAWA Court or any other Court / Forum. To be noted, we are informed that a complaint of Dowry Harassment has also been made by the petitioner and therefore, all the rights of all parties are preserved in this regard also.



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10. Captioned HCP disposed of as closed albeit with the
aforementioned directives and preserving all rights of parties of all
concerned in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

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Index : Yes / No

Speaking / Non-speaking order

Neutral Citation : Yes / No

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Note : Issue order copy forthwith

Upload forthwith

To

1. The Commissioner of Police
Vepery, Chennai-600 007.
2. The Inspector of Police
W-24, All Women Police Station
Teynampet, Chennai-600 018.
3. Mr.S.Praveen Kumar
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4. The Public Prosecutor
High Court, Madras.

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

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