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H.C.P.No.1331 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2023

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR  
AND  
THE HON'BLE Mr. JUSTICE K.KUMARESH BABU

H.C.P.No.1331 of 2023

Nagachandra Vathana

... Petitioner

Vs.

1.The Commissioner of Police,  
Salem City,  
Salem – 636 006.

2.State represented by  
The Inspector of Police,  
All Women Police Station,  
Salem Town.

3.S.Ramesh Aravind

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Habeas Corpus Petition directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to secure the petitioner's minor daughter Jeevika, aged about 4 years from the illegal custody of the 3<sup>rd</sup> respondent and produce her before this Court and handover her to the petitioner.

For Petitioner : Mr.R.S.Diwaagar



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For Respondents : Mr.R.Muniyapparaj  
Additional Public Prosecutor  
Assisted by Mr.M.Sylvester John  
for R1 and R2

: Mr.P.Tamilavel for R3

### **ORDER**

(Order of the Court was made by R.SURESH KUMAR, J.)

This Habeas Corpus Petition has been filed for directing the 1<sup>st</sup> and 2<sup>nd</sup> respondents to secure the petitioner's minor daughter Jeevika, aged about 4 years from the illegal custody of the third respondent and produce her before this Court and handover her to the petitioner.

2. The petitioner is the wife of the third respondent, between whom the marriage was taken place in the year 2016, out of the wedlock, they gave birth to a female child namely, Jeevika on 12.12.2018.

3. Thereafter in the year 2022, it seems that, there has been a difference of opinion between them which arose the separation between them as the petitioner/wife seems to have left the matrimonial house in the year 2022 and thereafter there seems to have no reunion between them.



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4. Subsequently, the petitioner/wife filed H.M.O.P.No.414 of 2022 on the file of the Family Court at Salem for a relief of restitution of conjugal rights against the third respondent.

5. That apart, the petitioner/wife also filed G.W.O.P.No.516 of 2022 in the same Court.

6. The said GWOP is pending and in the H.M.O.P.No.414 of 2022 since the third respondent, who was the respondent therein, was set *ex parte*, subsequently on coming to know the fact that in the HMOP an *ex parte* order was passed, he had filed a petition to set aside the order along with the counter affidavit in the main HMOP.

7. In fact, initially that was not taken on record by the Family Court, therefore it triggered the 3<sup>rd</sup> respondent namely, husband to come before this Court and filed a revision in C.R.P.No.949 of 2023, where this Court passed an order on 28.03.2023 giving some directions to the Family Court Judge to accept the counter and to entertain the petition filed by the third respondent to set aside the *ex parte* order, that application is still pending.



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8. In the meanwhile, it is submitted across the Bar by both the learned counsel appearing for the parties that, there is no Presiding Officer in the said Court namely, Family Court at Salem.

9. When that being the position, now the present HCP has been filed as if the detainee i.e., the daughter of the petitioner and the third respondent is in the illegal custody.

10. Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondent Police on instructions would submit that, the detainee girl is 4 years old minor, who is with the third respondent, who is none other than the father of the detainee girl and since it is the position where the detainee girl is with one of the natural guardian namely, third respondent/father, it cannot be construed as any illegal custody, therefore the question of producing the body or the person of the detainee minor girl before this Court does not arise, hence the HCP itself is misconceived, the learned Additional Public Prosecutor submitted.

11. Mr.P.Tamilavel, learned counsel appearing for the third respondent would contend that, insofar as the detainee minor girl is



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concerned, she is an autism affected child, therefore some treatment is going on at Bangalore, therefore round the clock care is required and medication and continuous medical care also is required, for these reasons the third respondent is looking after the child. Moreover, the petitioner/wife in the year 2022 abruptly left the matrimonial home and thereafter no attempt has been made to come and see the child even till today, that is the submission made by the learned counsel for the third respondent.

12. However, Mr.R.S.Diwaagar, learned counsel for the petitioner/ wife by relying upon the order passed on 21.01.2023 by the Family Court in H.M.O.P.No.414 of 2022 was trying to impress upon this Court about the conduct of the third respondent as despite the notice having been served, he did not choose to appear before the Court and he did not produce the child inspite of the orders having been passed.

13. Be that as it may, now the question before us is whether the detenue girl child is in illegal custody at the hands of anyone including the third respondent.



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14. This has been made clear by the Prosecution side that, the detainee girl child is none other than the daughter of the third respondent, who is the father of the detainee and the third respondent/father is taking care of the detainee child and therefore it cannot be construed as an illegal custody, when that being the position, this Court is not inclined to entertain this habeas corpus petition.

15. If at all the petitioner/wife wants to see the detainee girl child or if she wants to get the custody of the girl child by getting an order to appoint her as Guardian within the meaning of law, for which the said petitioner already approached the concerned Court and filed GWOP, it is for the petitioner to pursue those cases in the manner known to law.

16. Insofar as the third respondent is concerned, whenever the next hearing date is fixed after the Presiding Officer is posted in that Court, where the presence of the third respondent is required, certainly the third respondent should appear before the Court and he should pursue the petition already been filed to set aside the *ex parte* order in the HMOP cited supra against him.



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17. In view of the aforesaid facts and circumstances, since there has been no illegal custody on the part of the detenue girl either in the hands of the third respondent or anyone, this Habeas Corpus Petition is to be rejected, accordingly it is dismissed.

(R.S.K., J.) (K.B., J.)

03.08.2023

Index : Yes/No

Speaking Order : Yes/No

Neutral Citation : Yes/No

Sgl/vji

To

1. The Commissioner of Police,  
Salem City, Salem 636 006.

2. The Inspector of Police,  
Inspector of Police,  
All Women Police Station,  
Salem Town.

3. The Public Prosecutor,  
High Court Madras.



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R. SURESH KUMAR, J.  
And  
K.KUMARESH BABU, J.

Sgl

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