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HCP No.1179 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1179 of 2023

S.Bharathi Priya
D/o.P.L.Sivalingam

.. Petitioner

Vs.

1. The Commissioner of Police
Corporation of Tambaram
Karapakkam, ELCOT SEZ
Sholinganallur, Chennai-600 119.
2. The Inspector of Police
T-2, Chromepet Police Station
Chromepet, Chennai-600 044.
3. K.Ramesh Kannan
S/o.P.R.Kannan
..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus to direct the respondent police to produce the minor child viz., named xxxx, aged about 30 months, daughter of the petitioner before this Hon'ble Court and hand over the custody of the minor child to the petitioner.



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HCP No.1179 of 2023

For Petitioner : Mr.K.N.Nataraj
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
for R1 and R2
Mr.A.Maheshnath
Mr.K.Nithyavendan, 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 brevity, convenience and clarity].

2. The factual matrix in a nutshell is that the petitioner and third respondent (to be noted, third respondent is a private respondent) are married; that the marriage was solemnized on 04.09.2019; that from the wedlock, a girl child was born on 03.11.2020; that this girl child 'xxxxx' [we are masking the name of the minor daughter and we shall be referring to the girl child as 'absentee' for the sake of convenience and clarity] has been forcibly taken away from the petitioner by third respondent is the complaint; that the petitioner has lodged a complaint with the second respondent police on 20.02.2023; that the captioned HCP has been filed in this Court on 26.06.2023 under such circumstances.



HCP No.1179 of 2023

WEB COPY

3. Issue notice.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for respondents 1 and 2 (official respondents).

5. Mr.A.Maheshnath, learned counsel [Enrol. No.2239 of 2015] with address for service at No.372, New Additional Law Chambers, High Court, Chennai-600 104 along with his co-counsel accepted notice for third respondent (private respondent).

6. We heard the counsel on either side, learned Prosecutor and we make the following order:

(i) It comes to light that third respondent has already initiated divorce proceedings vide H.M.O.P.No.11 of 2023 on the file of Family Court, Pudukottai;

(ii) The petitioner has sought transfer of the aforementioned divorce proceedings from Pudukottai Family Court to Sub-Court, Tambaram vide Tr.C.M.P.No.160 of 2023



HCP No.1179 of 2023

WEB COPY

on the file of this Court (Madras High Court) and learned counsel for petitioner submits that there is an interim order staying all further proceedings in the Family Court granted by a Hon'ble single Judge. Learned counsel submits that this interim order is operating;

(iii) Learned Prosecutor submits that preliminary investigation revealed that the third respondent is now in Singapore and the absentee is with him;

(iv) The petitioner can seek suitable remedy either in HMOP post transfer or by filing a separate petition in GAWA Court (to be noted, 'GAWA' stands for 'Guardians and Wards Act, 1890'). This is owing to the fact that there is matrimonial discord between the petitioner and third respondent and it is a tussle for custody of absentee between two parents.

(v) To be noted, learned counsel, who accepted notice on behalf of third respondent submits that the petitioner was very ill and that is the reason why the absentee is with third respondent but we make it clear that we are not expressing any view or opinion on this submission as we leave open all these



HCP No.1179 of 2023

WEB COPY

questions to be decided by the Family Court or GAWA Court as the case may be. We are informed by the learned counsel, who accepted notice on behalf of third respondent that he has entered appearance in HMOP No.11 of 2023 also. If the petitioner moves GAWA Court, Mr.A.Maheshnath, learned counsel undertakes that he can be served with notice and he will accept notice on behalf of third respondent before us without insisting for separate notice or summons to the third respondent as the third respondent is in Singapore.

(vi) As regards complaint already lodged with second respondent police, we are informed that the same has now been closed as Family Court is in seizin of the matter but if there is any other issue that arises in this matter, if a complaint is lodged by any of the parties, jurisdictional police shall investigate the same on its own merits and in accordance with law untrammelled by this order;

(vii) We make it clear that all the rights of the petitioner, third respondent or anyone else concerned with this matter are preserved for being canvassed in GAWA Court or Family Court



HCP No.1179 of 2023

as the case may be and we make it clear that GAWA Court, Family Court or any other Court / Forum / Courts / Fora shall deal with the matter on its own merits and in accordance with law, untrammelled by this order as this order has been made for the limited purpose of habeas drill;

Captioned HCP disposed of as closed albeit with the aforementioned directives, observations and preservation of rights in the aforesaid manner.

(M.S.,J.) (R.S.V.,J.)
07.07.2023

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

Note: Upload latest by 10.07.2023 by lunch

To

1. The Commissioner of Police
Corporation of Tambaram
Karapakkam, ELCOT SEZ
Sholinganallur, Chennai-600 119.
2. The Inspector of Police
T-2, Chromepet Police Station
Chromepet, Chennai-600 044.
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.1179 of 2023

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