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HCP No.1178 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.1178 of 2023

Kavitha

W/o.Nagarajan

.. Petitioner

Vs.

1. The Superintendent of Police
District Police Office
Perambalur.
2. The Inspector of Police
All Women Police Station
Perambalur.
3. Nagarajan
4. Usha
5. Dhanarasu

..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 to produce the petitioner's minor child namely, xxxxx son of R.Nagarajan, aged about 1 1/2 years from the custody of the respondents 3 to 5 before this Hon'ble Court and hand over the custody to the petitioner.

For Petitioner	:	Mr.P.Nagaraju
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor for R1 & R2



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ORDER

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

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity, convenience and clarity] is II HCP in this Court as the same petitioner had earlier filed H.C.P.No.783 of 2023 with regard to the same issue and the earlier HCP was withdrawn by the petitioner vide an order dated 04.05.2023 made by another Hon'ble coordinate Bench. A scanned reproduction of the order made by the other Hon'ble coordinate Bench is as follows:



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.05.2023

IN RE:

THE HONOURABLE MR JUSTICE A.D. RAJAGOPAL CHANDRAN

and

THE HONOURABLE MR JUSTICE U.SAHAYAN

H.C.P.No.783 of 2023

Respondent

Petitioner

vs

1.The Superintendent of Police,
Dharm Police Office,
Perambalur District - 621 101.

2.The Inspector of Police,
All Women Police Station,
Perambalur.

3.Nagarpal,
USAR,
Uthamangudi

Respondents

Prayer: Will. Petition filed under Article 226 of the Constitution of India seeking a writ of Habeas Corpus, directing the 2nd respondent to produce the petitioner's minor child namely Aishwarya Rajagopal, 14 years from the custody of the respondent 1 to 5 before this Court and handover the custody to the petitioner.

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04.05.2023

For Petitioner : Mr.G.Papazhenthi
For Respondents : Mr.R.Muniyappa
Additional Public Prosecutor

ORDER

(Order of the Court was delivered by A.D.Jagadish Chandra, J.)

When the matter is taken up for hearing today, the learned counsel appearing for the petitioner seeks to withdraw the present habeas corpus petition with liberty.

2. Considering the above submission made by the learned counsel for the petitioner, we inclined to dismiss the habeas corpus petition, with liberty to the petitioner to file petition for guardianship before the appropriate judicial forum.

(A.D.J.C.J.) (C.S.N.J.)

04.05.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking / Non-Speaking order
ata/pv8

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<https://www.mhc.tri...>

2. Captioned II HCP has been filed thereafter in this Court on

28.06.2023.



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3. Today, Mr.P.Nagaraju, learned counsel on record for petitioner submits that in I HCP, erstwhile learned counsel on record for petitioner had not made endorsement of withdrawal but we do not propose to go into this arena.

4. Reverting to II HCP on hand, short facts are that the petitioner is married to third respondent (to be noted, third respondent is a private respondent); that the marriage was solemnized on 06.03.2022 (wrongly shown as 06.03.202 in the affidavit); that a male child 'xxxxx' [we are masking the name and we shall be referring to the male child as 'absentee' for the sake of convenience and clarity] was born from the wedlock on 09.11.2021; that there was matrimonial discord between petitioner and third respondent; that third respondent has already filed HMOP No.56 of 2023 on the file of Family Court, Perambalur; that HCP petitioner is the sole respondent in the Family Court, Perambalur; that the proceedings as uploaded in the E-Courts official website shows that this HMOP is next scheduled to be listed on 19.07.2023 for the respondent (HCP petitioner before us) to file counter; that it also shows that two interlocutory



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applications have been disposed; that allegation now is, the absentee is in the custody of respondents 3, 4 and 5; that it is submitted that respondents 4 and 5 are close relatives of third respondent; that it is mentioned that respondents 4 and 5 are maternal uncle and aunt of third respondent; that according to the petitioner, custody of the absentee with respondents 3 to 5 is illegal.

5. Issue notice.

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

7. Learned Prosecutor submitted that the investigation has been kick started and that the same will be pursued with all seriousness in accordance with law by the second respondent.

8. Learned counsel for petitioner submits that the petitioner is scared to go over to the aforementioned family Court in Perambalur and would prefer to seek transfer to a neutral venue.



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9. From the narrative thus far, it comes to light that it is a case of matrimonial discord and a tussle for custody of absentee between two parents. Therefore, we make the following order:

(i) Let the second respondent proceed with the investigation in accordance with law and carry it to its logical end;

(ii) All rights of the respondents 3 to 5 qua matrimonial proceedings / custody proceedings, if any are preserved and it is in this context, we dispose of the captioned HCP in the admission board. In other words, rights of the respondents 3 to 5 will not be impacted in any manner by this order and it will stand preserved;

(iii) Let the second respondent produce respondents 3 to 5 and absentee within one week i.e., by 14.07.2023 before learned Judge, Family Court, Thiruchirapalli with advance intimation to the petitioner so as to enable the petitioner to present before the Family Court;

(iv) We request learned Judge, Family Court, Thiruchirapalli to record the statements of parties;



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(v) As regards HMOP which is already pending, all rights and contentions of petitioner, third respondent or any other party are preserved;

(vi) It is open to the petitioner to seek transfer of HMOP to Thiruchirapalli or any other Court of her convenience and if such transfer plea is made, the Court concerned will consider the same on its own merits and in accordance with law untrammelled by this order;

(vii) It is open to the petitioner to initiate proceedings in GAWA Court (to be noted, 'GAWA' stands for 'Guardians and Wards Act, 1890') if so advised and if so desired. If such a course is adopted, GAWA Court shall deal with the matter on its own merits and in accordance with law untrammelled by this order;

(viii) Statements recorded by the Family Court, Thiruchirapalli can be used by all parties concerned in appropriate Forum / Fora as regards custody of the absentee or any other proceedings for that matter;



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10. Captioned HCP disposed of as closed with the aforementioned directives.

11. Though the captioned HCP is disposed of, we direct the Registry to list the captioned HCP under the cause list caption 'FOR REPORT' on 18.07.2023 but we make it clear that on 18.07.2023, parties need not be present before this Court and there will be no production of the absentee.

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

Index : Yes
Speaking
Neutral Citation : Yes

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To

1. The Superintendent of Police
District Police Office
Perambalur.
2. The Inspector of Police
All Women Police Station
Perambalur.
3. The Public Prosecutor
High Court, Madras.



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HCP No.1178 of 2023

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

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H.C.P.No.1178 of 2023

07.07.2023