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Writ Petition No.21928 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.21928 of 2023

Jansi Rani
W/o.Rajendiran

...Petitioner

Vs

1.The Child Welfare Committee,
Room No.29, Government Multiple Office Buildings,
1st Floor, Jayamkondam Road,
Ariyalur District.

2.The Inspector of Police,
All Women Police Station - Ariyalur,
Ariyalur District.

3.The Secretary,
Kovilur Adaikalamadha Adoption Centre,
Elakurichi Village & Post,
Ariyalur District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the impugned order passed in Ku.Na.Ku.Va.No.58/2023 dated 10.05.2023 by the first respondent and quash the same as illegal and



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consequently, direct the first respondent to handover the child Subathira (two years) to the petitioner, who is now in the custody of the third respondent Home.

For Petitioner : Ms.A.Nethra

For Respondents : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Writ Petition has been filed challenging the impugned proceedings of the first respondent in Ku.Na.Ku.Va.No.58/2023 dated 10.05.2023 and for a consequential direction to respondents to hand over the child to the petitioner, which is now kept under the custody of the third respondent Home.

2. Heard Ms.A.Nethra, learned counsel for petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for respondents.



3. The second respondent police had registered a case in Crime No.22 of 2023 for various offences under the Indian Penal Code, 1860 and Protection of Child from Sexual Offences Act, 2012. One Sakthivel is said to have had sexual intercourse with the victim girl and as a result, the victim girl became pregnant and she delivered a female child in the year 2021. The child came into the custody of the petitioner and her husband. The husband of the petitioner was also arrested on 25.04.2023 on the ground that he had illegally taken the child from one Sumathi by giving money.

4. The further case of the petitioner is neither the petitioner nor her husband have anything to do in the case that is pending in Crime No.22 of 2023 and they had taken care of the child for nearly two years without fulfilling any of the legal formalities. After the child was taken away, it is now kept in the third respondent Home. The petitioner, therefore, made an application before the first respondent to hand over custody of the child. The first respondent, through the impugned proceedings dated 10.05.2023, rejected the claim made by the petitioner and directed the petitioner to approach the Court seeking for the custody of the child. Aggrieved by the same, the present Writ Petition has been filed before this Court.



5. In the considered view of this Court, there is no legal relationship between the petitioner and the child, which is now in the custody of the third respondent Home. The petitioner has not adopted the child in the manner known to law and the only claim made by the petitioner is that she had taken care of the child for two years. This by itself does not entitle the petitioner to seek for custody of the child. The first respondent has rightly rejected the claim made by the petitioner. If at all the petitioner wants to adopt the child, she has to go through the process as stipulated in law and a relationship of mother and child must be established in accordance with law. Only thereafter, the petitioner will get the right to seek for the custody of the child. The custody of the child cannot be given to the petitioner merely on moral grounds and the Court has to necessarily look into the relationship between the petitioner and the child and see if the law permits the petitioner to seek for the custody of the child. This Court does not find that the petitioner is entitled for custody under any law. In view of the same, there is no ground to interfere with the proceedings of the first respondent.

In the light of the above discussion, there are no merits in this Writ Petition and accordingly, the same is dismissed. It is left open to the



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petitioner to work out her remedy in the manner known to law before the appropriate forum. No costs.

25.07.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To

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- 4.The Public Prosecutor,
High Court, Madras.



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N.ANAND VENKATESH, J

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