



H.C.P.No.1670 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

H.C.P.No.1670 of 2023

Kavya
D/o.Bairappa

.. Petitioner

Vs.

1. State : The Superintendent of Police
Krishnagiri District
Krishnagiri.

2. State : Inspector of Police
All Women Police Station
Denkanikottai
Krishnagiri District.

3. Mr.K.Ramesh Babu
S/o.Krishnappa

..Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ order or direction in the nature of WRIT OF HABEAS CORPUS, to direct the 2nd respondent to produce the petitioner's son K.R.Yeswin Gowda, aged about 3 years, before this Hon'ble Court from the illegal custody of the 3rd Respondent and hand over the custody.

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For Petitioner : Mr.M.P.Saravanan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

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

2. Short facts are that the petitioner and third respondent (private respondent) are spouses; that the marriage between petitioner and third respondent was solemnized on 19.11.2018; that on 05.10.2019, a male child 'xxxxx' [we are masking name of child and we shall be referring to the 'child' as 'absentee' for the sake of convenience and for obvious reasons] was born from the wedlock between the petitioner and third respondent; that there is matrimonial discord between petitioner and third respondent; that on 23.09.2020, petitioner has lodged a complaint making certain allegations regarding her spouse / in-laws in AWPS-Hosur, Krishnagiri District and a CSR receipt No.139 of 2020 (Family Quarrel) dated 23.09.2020 has been



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given; that third respondent's mother (petitioner's mother-in-law) has lodged a complaint in the jurisdictional police station (Uddanapalli Police Station, Krishnagiri District) and the same is taken on file vide FIR No.196 of 2023 dated 18.07.2023; that epicentre of the captioned HCP is custody of absentee; that the captioned HCP has been filed in this Court on 22.08.2023. Apprehension of possible illegal detention of absentee appears to be the basis for captioned HCP.

3. Today, Mr.M.P.Saravanan, learned counsel on record for petitioner and petitioner are before this Court.

4. Issue notice to respondents 1 and 2 (official respondents).

5. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for respondents 1 and 2 (official respondents) and learned Prosecutor is instructed by Mr.A.S.Jaffar Hussain, Inspector of Police, Rayakottai Circle Station, Denkanikottai, Krishnagiri District.



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6. On instructions, learned Prosecutor submits that second respondent has acted on the aforementioned complaints and preliminary investigation brings to light that absentee is now with the third respondent and third respondent's mother in the address given in the cause title. This drops the curtains on illegal detention apprehension.

7. Be that as it may, petitioner in the captioned HCP petition itself has made it clear that third respondent has already initiated matrimonial proceedings vide H.M.O.P.No.33 of 2023 on the file of 'Subordinate Judge's Court, Denkanikottai, Krishnagiri District' [hereinafter 'said Court' for the sake of convenience and clarity] seeking divorce *inter alia* under various sub-sections of Section 13 of the Hindu Marriage Act, 1955.

8. From E-Courts Official Website of the District Courts, the following comes to light.



WEB COPY



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Sub Court, Denkanikota

Case Details

Case Type	OP - Original Petition	Filing Date	13-06-2023
Filing Number	19-0-2023	Registration Date	14-06-2023
Registration Number	53-2023	Case Number	77N018-000266-2023
Case Number	77N018-000266-2023		

Case Status

First Hearing Date	14th June 2023
Next Hearing Date	08th September 2023
Case Stage	Issue of Service
Court Number and Judge	3-Subordinate Judge, Denkanikota

Petitioner and Advocate

1. XXXXXXX	
Advocate RAJASEKAR K	

Respondent and Advocate

1. XXXXXXX	
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Acts

Under Act(s)	Under Section(s)
HINDU MARRIAGE ACT 1955	13(1)(ii)(a)

Case History

Registration Number	Judge	Business on Date	Hearing Date	Purpose of Hearing
53-2023	Subordinate Judge, Denkanikota	14-06-2023	13-07-2023	Issue of Service
53-2023	Subordinate Judge, Denkanikota	11-07-2023	08-08-2023	Issue of Service

9. The above scanned reproduction of the download from E-Courts Official Website of the District Courts shows that the next hearing date in



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the said Court in H.M.O.P.No.33 of 2023 is 08.09.2023. Learned counsel for petitioner, on instructions, confirms that the petitioner has received summons and has also engaged a lawyer for representing her before said Court.

10. In the light of the narrative thus far, the following order is made:

(i) Let the second respondent ensure that third respondent and absentee are produced before said Court i.e., Subordinate Judge's Court, Denkanikottai, Krishnagiri District on 08.09.2023 when HMOP No.33 of 2023 is taken up;

(ii) It is open to the petitioner to make a suitable plea before said Court regarding custody of absentee by filing a suitable application as per applicable law. We make it clear that all the rights and contentions of third respondent, third respondent's mother and / or anyone concerned with the matter are preserved for being canvassed *inter alia* before said Court or any other Court/s/Forum/Fora/Authority/Authorities and this is more so, as the captioned HCP is being disposed of in



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the Admission Board when the third respondent is not before this Court;

(iii) This Court made it clear that this Court is not expressing any view or opinion about the custody of the absentee and said Court i.e., Subordinate Judge's Court, Denkanikottai, Krishnagiri District can take a call on its own merits and in accordance with law depending on the plea *de hors* this order;

(iv) It is also open to the petitioner and / or anyone concerned including third respondent and his mother and / or anyone else concerned with the matter to move jurisdictional GAWA Court [to be noted, 'GAWA' stands for 'Guardians and Wards Act, 1890'] or any other Court with regard to matrimonial discord between the petitioner / third respondent and tussle for custody of absentee as between two parents;

(v) As regards sub-paragraphs (ii) to (iv) supra we make it clear that this comes across as a tussle between two parents regarding custody of a minor child and therefore the



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aforementioned (ii) to (iv) owing to facts and circumstances of the case on hand;

(vi) As regards complaints given by petitioner and third respondent's mother, jurisdictional police shall proceed with the investigation on its own merits and in accordance with law untrammelled by this order.

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

(M.S.,J.)

(R.S.V.,J.)

31.08.2023

Index : Yes/No
Speaking / Non-speaking
Neutral Citation : Yes / No

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

mk

To

1. State : The Superintendent of Police
Krishnagiri District
Krishnagiri.
2. State : Inspector of Police
All Women Police Station
Denkanikottai
Krishnagiri District.
3. The Public Prosecutor
High Court, Madras.

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