



H.C.P.No.1941 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM

THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**  
AND  
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

**H.C.P.No.1941 of 2023**

Mrs.S.Jayashree

... Petitioner

Vs.

1.The Superintendent of Police  
Krishnagiri  
Pothinayanapally  
Jakkappan Nagar  
Krishnagiri – 635 001

2. The Inspector of Police  
HUDCO Police Station  
Hosur  
Krishnagiri

3. P.Mahavishnu

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to direct the second respondent to produce the petitioner's son Rudhranathan, aged about 9 years, minor child before this Court from the custody of the third respondent and hand over him to the petitioner.

For Petitioner : Mrs.Shantha Kumari  
for Mr.V.Sundarraman

For Respondents : Mr.E.Raj Thilak  
Addl. Public Prosecutor for R1 & R2



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## **ORDER**

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(Order of the Court was made by **S.S. SUNDAR, J.**)

This petition has been filed to direct the second respondent to produce the petitioner's son Rudhranathan, aged about 9 years before this Court from the custody of the third respondent and hand over him to the petitioner.

2. The brief facts that are necessary for disposal of this habeas corpus petition is as follows:

The petitioner is the mother of a minor child, aged 9 years and there was a matrimonial discord between the petitioner and third respondent, who is the husband of the petitioner. The other child of the petitioner is with her. The petitioner submits that the third respondent had taken the minor child from the school in Hosur without her knowledge. Though several allegations have been made against the third respondent in the affidavit filed in support of the petition, we are not inclined to go into those allegations.

3. This Court, on 30.10.2023 passed an order directing the third respondent to handover the minor to the petitioner (mother) at her residence in Hosur on 10.11.2023 and directed the petitioner to bring the minor to the Court on 15.11.2023. However,



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the third respondent did not obey the direction of this Court and therefore, on 15.11.2023, this Court directed the Registry to issue statutory notice after initiating *suo motu* contempt asking him to show cause as to why he should not be prosecuted for wilful disobedience of orders of this Court passed on 30.10.2023. This Court further directed the third respondent to handover the custody of the minor to the petitioner and again directed the petitioner to bring the child today.

4. When the matter was taken up today, the third respondent, who appeared before this Court expressed regret and tendered unconditional apology. This Court insisted the third respondent to file an affidavit and accordingly an affidavit has been filed by the third respondent tendering unconditional apology stating that his conduct was not wilful and has given an explanation for not handing over the child.

5. This Court after hearing the minor child, petitioner and third respondent is of the *prima facie* view that the third respondent had illegally taken the custody of the minor without any intimation to the petitioner. On enquiry, the minor child expressed his willingness to go with the father. This Court is also



aware of the fact that the custody of the minor child cannot be on the basis of the minor's opinion, which is always vulnerable and it would be some times against the interest of the minor child if we pass orders based on their opinion. In the course of hearing, the third respondent stated before this Court that he is staying with his brother. The minor during a conversation stated that food is cooked only by the brother of third respondent.

6. Having due regard to the fact that the minor was studying in a school in Hosur and the petitioner has the assistance of her parents in parenting the minor child, we are inclined to direct the custody of the minor with the mother till the third respondent approaches the competent court seeking custody or guardianship of the minor and gets an order. Till such time i.e., for a period of three months from now, the petitioner is directed to permit the third respondent to visit the minor child at the petitioner's premises or at any place which will be conducive for such meeting once in a week and let the third respondent take the child with him on a holiday not more than once in two weeks at 10.30am and bring back the child to the petitioner at 06.00pm on the same day. It is made clear that whenever third respondent takes the minor child with him, he shall ensure safety and well being of the minor



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child. If the third respondent visits the petitioner's premises, he may be treated properly by the petitioner and her inmates in the house.

7. Since the third respondent has filed the affidavit tendering unconditional apology for not handing over the child to the petitioner, accepting the same, we direct that the contempt proceedings directed to be initiated against the third respondent *suo motu* shall stand closed.

**(S.S.S.R., J.) (S.M., J.)**  
**20.11.2023**

Index : Yes / No  
Neutral Citation : Yes / No  
gpa

To

- 1.The Superintendent of Police  
Krishnagiri  
Pothinayanapally  
Jakkappan Nagar  
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2. The Inspector of Police  
HUDCO Police Station  
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