



HCP(MD)No.140 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2023

CORAM

**THE HON'BLE DR JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE SUNDER MOHAN**

H.C.P.(MD)No.140 of 2023

P.Nishanthi

.. Petitioner

Vs.

1.The Superintendent of Police,
Theni District, Theni.

2.The Inspector of Police,
Allinagaram Police Station, Theni.

3.M.R.Amarendra Kumar

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the respondents herein to produce the person or body of the petitioner's daughter namely A.Ashritha Varshini, aged 9 years, before this Court and hand over the custody to the petitioner.

For Petitioner :Mr.G.Aravinthan

For R1 & R2 :Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For R3 : Mrs.Padma



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ORDER

DR G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.

On perusing the affidavit filed by the petitioner, this Court finds that the dispute regarding the custody of the minor child between the husband and wife alleging that the third respondent has violated the visitation order and illegally retaining the custody of the minor child, the present habeas corpus petition is filed.

2. The learned counsel appearing for the third respondent submitted that H.M.O.P.No.70 of 2017 was filed for divorce by mutual consent and the same was allowed on 23.03.2018, visitation right was given to the third respondent and accordingly, the third respondent used to visit the child and have temporary custody of the minor child. Since some physical injuries noticed on the minor child, for treatment, the child been retained by the third respondent. Further, it is stated that G.W.O.P.No.59 of 2021 is pending on the file of the Principle District Court, Chengalpat.



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3. This Court is of the view that when the matter has been seized off by the competent Court to decide about the custody of the child interfering the matter exercising the power under Article 226 of the Constitution of India will tantamount to abuse the power. Hence, this habeas corpus petition is dismissed with liberty to the petitioner to work out their remedy before the Principle District Court, Chengalpat where the Guardian Wards Original Petition is pending.

4. The learned Principle District Judge, Chegalpat, before whom the Guardian Wards Original Petition is pending, shall not be influenced by any of the observation made in the habeas corpus petition while deciding the petition.

(G.J.,J.) (S.M.,J.)
31.01.2023

Index :Yes/No
Internet:Yes/No
NCC :Yes/No
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To

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1. The Superintendent of Police,
Theni District.
2. The Inspector of Police,
Devadanapatti Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR G.JAYACHANDRAN,J.
and
SUNDER MOHAN,J.
am

ORDER MADE IN

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