



HCP(MD)No.280 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.03.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE K.K.RAMAKRISHNAN**

H.C.P.(MD)No.280 of 2023

C.Jenifer

.. Petitioner /Mother of
the detenu

Vs.

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

2.The Inspector of Police,
All Women Police Station,
Thoothukudi Town,
Thoothukudi.

3.The Chair Person,
Child Welfare Committee,
Thoothukudi District.

4.Charless

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, calling for the records relating to the order passed by the third respondent in petition No.02/Ku.Na.Ku /2022 dated 24.11.2022 and quash the same and direct the respondents to produce the body or detenu namely Evaniya Esther, D/o.Charless, aged about 5 years



HCP(MD)No.280 of 2023

before this Court and hand over her custody to the petitioner.

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For Petitioner	:Mr.C.Mayilvahan Rajendran
For R1 & R2	:Mr.R.Meenakshi Sundaram Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN,J.
AND
K.K.RAMAKRISHNAN,J.

The habeas corpus petition is filed by the mother of a minor daughter alleging that based on the complaint given by her husband, the Child Welfare Committee, who is arrayed as third respondent in the petition, has enquired the parties and handed over the minor daughter to her husband. This order passed by the Child Welfare Committee is beyond their power and jurisdiction and therefore, custody with the fourth respondent (father of the minor child) is illegal.

2. The learned Additional Public Prosecutor appearing for the respondents 1 & 2 submitted that due to matrimonial discard, the husband and wife got separated. Out of two children, elder daughter is with the father and the younger daughter is with the mother. On the complaint given



HCP(MD)No.280 of 2023

by the father, the Child Welfare Committee has called the parties as well as the minor girl and after due enquiry, they in their wisdom, has found fit that the father will be the best person to take the custody and care of the minor girl and accordingly ordered the child to be with the father and he has to submit a report once in six months before the Probation Officer. This order was passed on 24.11.2022.

3. On perusal of the said order indicates that the Child Welfare Committee has passed the said order in exercising the power conferred under Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as below:-

“29. Child Welfare Committee (1) The State Government may, [within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, by notification in the Official Gazette, constitute for every district], one or more Child Welfare Committees for exercising the powers and discharge the duties conferred on such Committees in relation to child in need of care and protection under this Act.



(2) The Committee shall consist of a Chairperson and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on matters concerning children.

(3) The qualifications of the Chairperson and the members, and the tenure for which they may be appointed shall be such as may be prescribed.

(4) The appointment of any member of the Committee may be terminated, after holding inquiry, by the State Government, if-

(I) he has been found guilty of misuse of power vested under this Act;

(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence;

(iii) he fails to attend the proceedings of the Committee for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

(5) The Committee shall function as a Bench of Magistrates and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class.”



HCP(MD)No.280 of 2023

4. The learned counsel for the petitioner submitted that the Child Welfare Committee has no power to pass such order, but however, the plain reading of Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which has been extracted above, clearly indicates that the Child Welfare Committee has every power to consider the representation regarding protection, care and welfare of the minor child. Procedurally, the third respondent has exercised the said power and passed an order after affording an opportunity to all the parties including the minor girl, whose interest been taken into account after considering her response. Therefore, if at all the petitioner is aggrieved, she has to work out her remedy challenging the said order before the appropriate forum or seek for custody under Guardian Original Petition which the husband has resorted in respect of the other daughter. The petitioner has approached the wrong forum under wrong provision of law. Hence, this habeas corpus petition is dismissed.

(G.J.,J.) (K.K.R.K.,J.)
02.03.2023

Index :Yes/No
Internet:Yes/No
NCC :Yes/No
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HCP(MD)No.280 of 2023

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ORDER MADE IN

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