



H.C.P.(MD) No.315 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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M.Mahadevan

... Petitioner / Father of
the detenue

Vs.

1.The Superintendent of Police,
O/o. The Superintendent of Police,
Tenkasi District,
Tenkasi.

2.The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
(Crime No.200 of 2022)

4.S.Ismail

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the Respondents No.1 & 2 to produce the Person or body of the petitioner's daughter namely Pavithra D/o.M.Mahadevan, aged about 22/2023, before this Hon'ble Court and set her at liberty.



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For Petitioner : Mr.T.Thirumurugan

For Respondents : Mr.A.Thiruvadi Kumar
1 & 2 Additional Public Prosecutor

ORDER

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

This Habeas Corpus Petition has been filed seeking a direction to the Respondents No.1 & 2 to produce the person or body of the petitioner's daughter namely Pavithra D/o.M.Mahadevan, aged about 22/2023, before this Court and set her at liberty.

2. Pursuant to the earlier proceedings issued in this Habeas Corpus Petition, the detinue, the third respondent as well as the wife of the third respondent with their children appeared before this Court.

3. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, appearing for the first and second respondents would submit that, even though under Section 3 of Muslim Women (Protection of Rights on Marriage) Act, 2019, (In short the Act, 2019), any pronouncement of talaq by any Muslim husband upon his wife, by words, either spoken or written or



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in electronic form or in any other manner shall be void and illegal and is a punishable offence for which the imprisonment for a term three years and fine can be imposed, the police can take cognizance of the offence only on the basis of the procedure to be adopted under Section 7 of the Act, wherein, the Act, 2019 says that the offence under the Act shall be cognizable, if the information relating to the commission of the offence is given to an Officer in charge of a police station by the married Muslim woman, upon whom talaq is pronounced or any person related to her by blood or marriage.

4. Relying upon these provisions, the learned Additional Public Prosecutor would submit that insofar as the present case is concerned, whether the third respondent has pronounced any talaq against his wife or not is not known and unless and until it is revealed by her statement or complaint to be given by the wife of the third respondent within the meaning of Section 7 of the Act, the police cannot take cognizance.

5. Even in respect of the offence punishable under Section 494 I.P.C., where also the law shall be set in motion by the legally wedded wife.



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Here, the legally wedded wife of the third respondent has not come forward to make any complaint or statement before the respondent police, hence, no further action could be taken towards registering an F.I.R., and investigate the matter towards a cognizable offence or taking cognizance of a non-cognizable offence either under the provisions of I.P.C. or under the provisions of the said Act, 2019.

6. We have heard the learned counsel appearing for the petitioner, who would submit that the petitioner and his wife, who are the parents of the detainee, even though knowing that she is pregnant and in advance stage, out of the intimacy and cohabitation with the third respondent, they are ready and willing to take the detainee with them.

7. However, the detainee girl has stated categorically that, she does not want to go with the petitioner or her mother i.e., parents of the detainee and she wants to continue to live with the third respondent.

8. The wife of the third respondent also stated before this Court that, though the third respondent has developed intimacy with the detainee girl and had been living together in Kerala for the past more than nine



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months, in the interest of her as well as her children, as there are three children born out of the wedlock of the third respondent and his wife, she wants her husband i.e., the third respondent to live peacefully by taking care of both the wives viz., I.Najima Banu as well as the detenue. If that being the position as stated by both the wife of the third respondent as well as the detenue girl and the detenue girl also is major and the difficulty since has been expressed by the learned Additional Public Prosecutor as no cognizable offence can be taken into account either under the provisions of I.P.C. or under the Act, 2019, we are of the view that this Habeas Corpus Petition can be closed by recording the aforestated as the detenue girl being a major and she is very firm to live with the third respondent and does not want to go with the petitioner. Thus, since it cannot be treated as an illegal custody of the detenue at the hands of the third respondent or any one else, this Habeas Corpus Petition can be closed and accordingly closed.

(R.S.K., J.) & (K.K.R.K, J.)

19.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

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R.SURESH KUMAR, J.

AND

K.K.RAMAKRISHNAN, J.

SJ

To

- 1.The Superintendent of Police,
O/o. The Superintendent of Police,
Tenkasi District,
Tenkasi.
- 2.The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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