



H.C.P.(MD) No.501 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Prabadevi

... Petitioner / Mother of the Detenue

Vs.

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

2.The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.

3.Kannadasan

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the body or person of the detenue, the petitioner's minor female daughter, namely, Smiruthi, D/o.Kannadasan, aged about 5 years before this Court and handover the custody to the petitioner.



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For Petitioner : Mr.N.Manavalan
For R1 and R2 : Mr.RMS.Sethuraman,
Additional Public Prosecutor

ORDER

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

The petitioner, seeking production of her daughter, namely, Smiruthi, aged about 5 years, has filed this Habeas Corpus Petition.

2.Today, when the matter is taken up for hearing, the learned counsel appearing on behalf of the petitioner / mother has stated that the detainee child had already been with the custody of the petitioner only. When that being so, the detainee child has been taken forcibly by the 3rd respondent and therefore, the detainee child should be directed to be produced and to be handed over to the petitioner.

3.The 3rd respondent, who is the father of the child and the husband of the petitioner, appeared before this Court as party-in-person. He has narrated the past history and also stated that since there has been



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strained relationship between them ie., the 3rd respondent and the petitioner, they have separated and for the past two years they are living separately, but at the same time, the 3rd respondent has stated that he wanted to live with the petitioner and two children and to lead a happy life. In this context, it is his further contention that he has filed a petition before the concerned Court, seeking for restitution of conjugal rights, whereas the petitioner / wife has filed a divorce petition before the concerned Court and both are pending and no considerable progress has been shown in these cases.

4.When that being the position, since there are two children born out of the wedlock between the petitioner and the 3rd respondent and one child is already with the custody of the petitioner, he wants to take the custody of another child as a father and natural guardian and hence, he seeks indulgence of this Court.

5.However, the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the official respondents stated that earlier the very same petitioner filed H.C.P.(MD)No.1795 of 2022, seeking custody of the child and in this context, the Division Bench of this Court



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passed an interim order dated 08.11.2022, giving custody of the child to the petitioner / mother and the visitation right to the 3rd respondent / father.

During the visitation, some commotion had been taken place, with the result, when final order was passed, this Court, by an order dated 22.11.2022, had directed to give the custody of the child concerned to the petitioner / mother and the 3rd respondent was directed to workout his remedy by filing appropriate petition.

6.Though this has been pointed out before this Court by the learned counsel for the petitioner as well as the learned Additional Public Prosecutor for the official respondents, the fact remains that the 3rd respondent is the father and natural guardian of the child concerned. He appeared before this Court as party-in-person and made his submissions and narrated the story that though he has taken several attempts to amicably settle the issue and still he wants to live with the petitioner along with two children born out of the wedlock between the petitioner and the 3rd respondent, such genuine attempts made by the 3rd respondent are frustrated by the petitioner.



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7. In this context, it is to be noted that these two children are legitimate children born out of the wedlock between the petitioner / wife and the 3rd respondent / husband. When that being so, if there is any strained relationship between the couple, that should not hamper the well-being of the children.

8. In this context, if we look at the social pattern in this part of the Country that whenever such strained relationship is taken place, the welfare of the children would be first taken care of, here, the petitioner being the mother certainly would be capable of nurturing atleast one child of the two and at the same time, though the 3rd respondent / father is capable of nurturing both the children, as he may be the earning member of the family and breadwinner of the family, naturally, the resources would come from the father, if not both the children are to be given to the custody of the 3rd respondent / father, atleast one child of the two, in the considered opinion of this Court, must be given custody to the 3rd respondent / father atleast for the time being till the couple workout the remedy before the concerned Court, seeking custody of the children that too depending upon the petition filed by



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the petitioner / wife for divorce and the petition for restitution of conjugal rights filed by the 3rd respondent / husband.

9.If the Court has taken a view that both children must be with the custody of the petitioner, then even if we give visitation right as has been given by the Co-ordinate Bench through the order dated 08.11.2022, there would be no guarantee that there would not be further commotion in each and every time when the 3rd respondent wants to make visit to the petitioner's house to see the children.

10.Therefore, taking note of the totality of the situation, since it is a family bondage between the family members ie., father, mother and children vice versa, husband and wife, the Court must be slow in expressing its opinion and there cannot be strait jacket formula to be adopted in that kind of cases, as it depends upon the circumstances of the every case. In this case, we heard the 3rd respondent, who had appeared before this Court as party-in-person and it is his pathetic case, which this Court must have to take judicial notice and in view of the above, we are inclined to pass the following order:-



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“that insofar as the detenue child, who is already with the custody of the 3rd respondent, who is none other than the father of the detenue, is concerned, let the custody of the said child be continued with the 3rd respondent for the time being. Insofar as the other child is concerned, it is an admitted fact that the custody of the said child is already with the petitioner. Insofar as the visitation right is concerned, this Court do not want to express any view at this juncture. Therefore, in this context, either if the petitioner want to have visit and to see the child, which is going to be the custody of the 3rd respondent or vice versa, both the parties can approach the concerned Court and seek for appropriate remedy in the manner known to law.”

11.With these observations and directions, this Habeas Corpus Petition is closed.

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

25.04.2023

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

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R.SURESH KUMAR, J.

AND

K.K.RAMAKRISHNAN, J.

MYR

To

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

2.The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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