



HCP(MD)No.871 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 31.07.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

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S.Meenakumari

.. Petitioner / Mother of Detenu

Vs.

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

2.The Inspector of Police,
Pattukottai Police Station,
Thanjavur District.

3.T.Athma Ramalingam

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the respondents 1 & 2 to produce the person or body of the petitioner's minor son namely Athmanathan, S/o.Meenakumari, aged about 6 years before this Court and hand over the custody to the petitioner.



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For Petitioner : Mr.V.P.M.Vaishnavi
For R1 & R2 : Mr.RMS.Sethuraman
Additional Public Prosecutor
For R3 : Mr.B.Anandan

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

The petitioner herein, claiming that she intends to adopt a new born child, prays for securing the boy, namely, Athamanathan, aged about 6 years and handing over his custody to her. Though, in the prayer sought for in the present petition, the petitioner claims herself to be the mother of Athmanathan, she does not claim the child to be her son in the averments made in the affidavit.

2.The second respondent Police had filed a status report, in which, it is stated that child was originally born to one Rani, aged about 42 years, D/o.Thiyagarajan. The said Rani is deaf and dumb, who is now in the care and custody of her mother's sister, namely, T.Duraiyammal.



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3. In connection with the present Habeas Corpus Petition, the respondent Police also recorded a statement from Ms.Rani, through an interpreter Ms.T.Duraiammal, wherein, she had confirmed that the child was born to her on 04.10.2016 at Janaki Hospital, Pillaiyar Kovil Street, Pattukottai. Since she is not in a position to reveal the father of the child, she had stated that she intends to give the child in adoption to the third respondent, namely, T.Athma Ramalingam, S/o.Thangavel.

4. We had also interacted with Ms.Rani, through her interpreter namely, Ms.T.Duraiammal, who reiterated that the child was born to her and that she does not intend to give the child in adoption to the petitioner, but give him in adoption to the third respondent, by taking into account the welfare of the child.

5. We had also interacted with the child, who, though aged about 6 years, was clear in his wish to be under the care and custody of the third



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respondent herein. Likewise, we had also interacted with the third respondent, who had also stated that he had not received or agreed to receive any payment or reward in consideration of adoption.

6. The petitioner herein, admittedly, is not the biological mother of the child. In her affidavit also, she had claimed that she only intends to adopt the child. Since the biological mother and the prospective adoptive father have expressed their views that the child shall be in the care and custody of the third respondent herein, the prayer sought for in the present petition may not require consideration.

7. It is now brought to our notice that after the child was born, the Pattukottai Municipality had issued a Birth Certificate bearing No. 106/2016/1/00268, dated 02.05.2016, in which, the child's name has been recorded as 'Athmanathan', born on 10.04.2016. However, in the column of 'Name of Father of the child', the third respondent's name, namely, Athma Ramalingam and 'Name of Mother' as 'Meena', have been given. Both



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these entries have apparently incorrect. On the other hand, the column of “father’s name” in the Birth Certificate, ought to have been left “blank” and mother’s name ought to have been incorporated as “Rani, D/o.Thiyagarajan”.

8.This fact stands confirmed from the statement given to us in the present proceedings, as well as to the second respondent Police under Section 161(3) of Cr.P.C., during enquiry, with the aid of the Translator, namely, Duraiammal, whose statement have also been recorded. The Doctor, who had attended the delivery of child, namely Dr.Neelavathi, as well as the Public Relation Officer of Janaki Hospital, where the child was born, were also examined by the police and their statements have also been recorded, which have been produced before us. In this background, the birth certificate issued by Pattukottai Municipality requires to be rectified.

9. Under Chapter VIII of Juvenile Justice (Care and Protection) Act, 2015, (hereinafter referred to as 'the Act') the Authority to pass appropriate



orders for adoption would be the District Magistrate/District Collector and the procedure for passing of such orders is provided in Section 61 of the Act.

10. Section 61 of the said Act reads as follows:

“61. (1) Before issuing an adoption order, the court shall satisfy itself that

(a) the adoption is for the welfare of the child; (b) due consideration is given to the wishes of the child having regard to the age and understanding of the child; and (c) that neither the prospective adoptive parents has given or agreed to give nor the specialised adoption agency or the parent or guardian of the child in case of relative adoption has received or agreed to receive any payment or reward in consideration of the adoption, except as permitted under the adoption regulations framed by the Authority towards the adoption fees or service charge or child care corpus.

(2) The adoption proceedings shall be held in camera and the case shall be disposed of by the court within a period of two months from the date of filing”.



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11. In the light of our observations and findings, we had satisfied ourselves that the proposed adoption of the child by the third respondent is for the welfare of the child and the wishes of the child also seems to be so. We have also satisfied that the prospective adoptive parent/third respondent herein had not received / agreed to receive any reward in consideration of the adoption and hence, there cannot be any impediment for the District Collector to pass appropriate orders for adoption of the child in favour of the third respondent. In this background, the concerned District Collector can be directed to dispense with the detailed procedure contemplated under Section 61 of the Act and pass appropriate orders of adoption in this regard.

12. In the light of the above findings, the prayer sought for in the Habeas Corpus Petition does not require consideration. Consequently, the following orders are passed:

- (a) The care and custody of the boy Athmanathan, shall be continued by the third respondent herein;



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(b) There shall be a direction to the Birth and Death Registrar, Pattukottai Municipality, to pass appropriate proceedings cancelling the birth certificate of the child Athmanathan, bearing Registration No.106/2016/1/00268 and consequently issue a rectified birth certificate, by deleting the name of father of the child Athmanathan and leave the column “Blank”. Likewise, the name of mother “Meena” shall be deleted and name of “Rani, D/o.Thiyagarajan” shall be incorporated. Such proceedings shall be passed and a rectified copy of the certificate shall be issued by the Registrar, within a period of one week, from the date of receipt of a copy of this order;

(c) Liberty is hereby granted to the third respondent to file an application before the District Collector, Thanjavur, seeking for adoption of the child Athmanathan, S/o.Rani, residing at Thondaiman Street, Thirumangalakottaiyur, Seelaiyur, Orathanadu Taluk, Thanjavur District as expeditiously as possible. On receipt



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of such application, the District Collector shall pass appropriate orders of adoption in favour of the third respondent/Athma Ramalingam, without going through the detailed procedure contemplated under the Act, within a period of one week, from the date of receipt of the application of the third respondent.

(d) While passing such orders, it would be open to the District Collector to seek for the presence of the child, biological mother along with her interpreter as well as the third respondent herein.

13. With the above observations and findings, the Habeas Corpus Petition stands closed.

(M.S.R.,J.) (M.N.K.,J.)
31.07.2023

NCC : Yes / No
Index : Yes / No



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Office to Note:

- Copies shall be marked to the District Collector, Thanjavur and the Registrar, Registration of Birth and Death, Pattukottai Municipality, Thanjavur District.

PNM/RR

To

- 1.The District Collector,
Thanjavur.
- 2.The Superintendent of Police,
Thanjavur District, Thanjavur.
- 3.The Registrar,
Registration of Birth and Death,
Pattukottai Municipality, Thanjavur District.
- 4.The Inspector of Police,
Pattukottai Police Station,
Thanjavur District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

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