



HCP(MD)No.990 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 29.08.2023

CORAM

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

H.C.P.(MD)No.990 of 2023

Renuga

.. Petitioner /Mother of
Detenue

Vs.

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

2.The Inspector of Police,
Aranthangi Police Station,
Pudukkottai District.

3.Anbarasan

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the second respondent herein to produce the body or person of the petitioner's minor three children, namely, Harithiksha, aged 6 years, Kishotra and Kashmiri, aged 4 years, D/o.Anbarasan, respectively before this Court and hand over them custody to the petitioner.



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For Petitioner : Mr.M.Suresh
For R1 and R2 : Mr.RMS.Sethuraman
Additional Public Prosecutor
For R3 : Mr.S.Krishnan

ORDER

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

The petitioner is the wife of the third respondent herein. In the course of their marriage, three children, namely, Harithiksha, aged about 6 years, Kishotra and Kashmir, aged about 4 years, were born to them. Owing to certain matrimonial disputes, the petitioner had filed an application under the provisions of the Guardians and Wards Act before the learned Principal District and Sessions Judge, Pudukkottai, in G.W.O.P.No.49 of 2022 seeking for custody of her minor children. The third respondent was set *ex-parte* in the said proceedings. By an order, dated 30.08.2022, the petitioner was appointed as the guardian of her minor children and the third respondent was directed to hand over the custody of the minor children to the petitioner.



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2. It is the case of the petitioner that on 04.07.2023, the third respondent had come to her father's village where she was residing and forcibly took custody of the minor children and left the place. A complaint given by the petitioner in this regard was registered by the second respondent in Crime No.382 of 2023 on 15.07.2023 for the offence punishable under Sections 294(b), 323 and 506(i) IPC. Thereafter, the mediation conducted by the family members with regard to the matrimonial dispute and the custody of the minor children turned futile. Since the petitioner had the benefit of the Court order for custody of the minor children and the third respondent had not handed over the children to her, she had preferred this Habeas Corpus Petition.

3. While the learned counsel appearing for the petitioner submitted that the *ex-parte* order dated 30.08.2022 is still in force, the learned counsel appearing for the third respondent submitted that he has already filed an application seeking for setting aside the *ex-parte* order and the same is under consideration before the concerned Court.



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4. It is needless to point out that unless and until the order passed by the Court under the provisions of the Guardians and Wards Act is set aside, the order would stand enforceable and therefore, the custody requires to be with the petitioner herein. Furthermore, when there was a valid Court order against the third respondent herein, forcible taking of the custody of the children would amount to an unlawful custody. Therefore, the prayer sought for in the present petition may require consideration. We would hasten to add here that if at all the third respondent is of the view that he would be entitled for the custody, the appropriate remedy would be to approach the concerned Guardian and Wards Court to seek for setting aside the *ex-parte* order. However, in view of the order passed by the learned Principal District and Sessions Judge, Pudukkottai, the third respondent would not be entitled for having custody of the children at present.

5. Accordingly, a writ of Habeas Corpus is hereby issued to secure the three minor children from the third respondent herein who are all present before this Court and the custody of these children is directed to be handed over to the petitioner herein and such a custody would be subject to the final



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outcome of the proceedings in the application filed by the third respondent
for setting aside the *ex-parte* order.

6. Accordingly, this Habeas Corpus Petition is allowed.

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

29.08.2023

NCC : Yes / No
Index : Yes / No
ssb

To

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



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