



H.C.P(MD)No.1272 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.10.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

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K.Parthasarathy

.. Petitioner

vs

1.The State by
The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.

2.The Inspector of Police,
B2-Bazar Police Station,
Ramanthapuram – 623 501.

3.Shanthi

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Habeas Corpus directing the respondents 1 and 2 to produce minor son namely P.Gokula Krishnan, son of Parthasarathy, aged 4 years, who is illegally detained by respondent No.3 before this Court and hand over him custody to the petitioner.



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For Petitioner : Ms.S.Nadhiya

For RR 1 & 2 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.]

Captioned 'Habeas Corpus Petition' [hereinafter 'HCP' for the sake of brevity] has been filed in this Court on 07.09.2023.

2.Factual matrix in a nutshell is that the petitioner was married to one Anitha on 24.08.2016; that from this wedlock a male child was born on 10.10.2019; that on 03.06.2022 unfortunately petitioner's spouse Anitha died; that according to petitioner, it is a suicide but third respondent (private respondent and HCP petitioner's mother-in-law) has lodged a complaint and this complaint is now F.I.R No.340 of 2022 dated 03.06.2022 on the file of Kumbakonam East Police Station, Thanjavur for alleged offence under Section 174(3) of Criminal Procedure Code; that according to petitioner his child/son, who is now four years old, is with third respondent; that third respondent made herself scarce and did not permit the petitioner to see



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his child; that petitioner now wants custody of his son and claim his right as a natural guardian; that fearing that the petitioner's son may have been illegally detained and owing to not knowing the exact location of third respondent, captioned HCP has been filed.

3.Issue notice to the respondents.

4.Mr.R.Meenakshi Sundaram, learned Additional Public Prosecutor accepts notice for respondents 1 and 2 (Official respondents) and learned Prosecutor is instructed by Mr.A.Kumar, Sub-Inspector of Police, B2-Bazar Police Station, Ramanathapuram.

5.The third respondent is present in Court along with a four years old child, who is petitioner's son and third respondent's grandson. This four years old child is xxx [we are masking the name of the child and we shall hereinafter refer to him as 'absentee' for the sake of convenience and clarity]. As regards the location of third respondent, Aadhar Card has been produced and the address in the Aadhar Card is as follows:



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'Address:

W/o.Viswanathan,
S.Kannusamy Nagar,
Ayyanar Kovil Root,
Kumbakonam, Melakaveri,
Thanjavur, Melakaveri,
Tamil Nadu – 612 002.'

6. Mr.A.Kumar, Sub-Inspector of Police, B2-Bazar Police Station, Ramanathapuram, who is instructing learned Prosecutor, submits that he has gone over to the address mentioned in the short cause title i.e., address of the third respondent, namely Shanthi, C/o.M.Narayanan, No.15/1H, Divan Narayana Savadi Merkkku Street, Ramanadhapuram and the Officer affirms that the third respondent as well as absentee are very much available in that address. Third respondent also confirms that she is residing in that very address with the absentee.

7.To be noted, in the aforementioned Aadhar card another address is given but this Court is informed that it is the earlier address of



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third respondent and third respondent is now residing with absentee in the aforementioned address.

8.Now that third respondent as well as absentee are before this Court and as the address of third respondent has been confirmed by the Officer from the jurisdictional Police Station i.e., B2 Bazaar Police Station, Ramanathapuram – 623 501, we are of the considered view that this is a case of tussle between father and grandmother (maternal grandmother) of the absentee for custody of the absentee. This would be within the remit of the jurisdictional GAWA Court (to be noted, 'GAWA' stands for 'Guardians and Wards Act, 1890').

9.In the light of the narrative thus far, we deem it appropriate to drop the curtains on the captioned HCP albeit making it clear that all the rights and contentions of petitioner, third respondent and/or any other person concerned with the matter are preserved qua (a) aforementioned pending criminal complaint (F.I.R dated 03.06.2022); (b) proceedings for custody of absentee; and (c) any other connected/collateral proceedings.



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10. We also make it clear that any Court/s/Forum/Fora/Authority/s if approached with regard to this matter, shall deal with the matter on its own merits and in accordance with law untrammelled by the closure of captioned HCP as this order has been made for the limited purpose of giving a closure to the habeas legal drill.

11. Captioned HCP is disposed of as closed albeit with the aforementioned observations, capturing what unfurled in the hearing today and with preservation of rights in the aforementioned manner.

(M.S.,J.) (R.S.V.,J.)
18.10.2023

Index : Yes/No
Neutral Citation : Yes/No
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