



HCP(MD)No.2113 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.01.2023

CORAM

**THE HON'BLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN**

H.C.P.(MD)No.2113 of 2022

Sorna Bagavathy

.. Petitioner / Mother of the
Detenu

Vs.

1.The Superintendent of Police,
Sivagangai District.

2.The Inspector of Police,
North Police Station,
Karaikudi,
Sivagangai District.

3.G.Subramaniyan
4.Ganapathy Raman
5.G.Vijaya
6.Suba Thanga Jeyashree

.. Respondents

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 petitioner's Minor Daughters 1.Vijaya Varshini, D/o.subramaniyan, aged 13 years and 2.Vijaya Vaishali, D/o.Subramanian, aged 8 years, before this Court and hand over the custody to the petitioner.



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HCP(MD)No.2113 of 2022

For Petitioner :Mr.N.Sankar Ganesh

For Respondents :Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

ORDER

DR. G.JAYACHANDRAN,J.

AND

SUNDER MOHAN,J.

The petitioner is the mother of two minor children, one is aged about 13 years and another child is 8 years old.

2.According to the petitioner, her husband, the third respondent is having the custody of the children and they are illegally detained by him. Hence, Habeas Corpus Petition is filed to direct the first and second respondents to produce the body of the minor daughters.

3.Even according to the petitioner, she got married to the third respondent on 20.01.2008 at Thoothukudi and begotten two children. Alleging that the third respondent in continuously harassing her physically and emotionally, she has been subjected to tremendous cruelty. However, for the sake of her two minor children, the petitioner was tolerating the torture.



HCP(MD)No.2113 of 2022

While so, the third respondent filed a petition for divorce in H.M.O.P.No.70 of 2015 before the Sub-Court, Tenkasi, on the ground of desertion. This petition was closed, since compromise was effected between the spouse. Alleging that the third respondent is having illicit intimacy with several ladies and her husband has forcibly taken the custody of two children on 26.04.2021 and also filed a petition for divorce in H.M.O.P.No.203 of 2022 before the Sub-Court, Devakottai and also D.V.O.P.No.115 of 2022 before the learned Judicial Magistrate, Karaikudi. In the said circumstances, the present petition is filed seeking writ of Habeas Corpus Petition alleging that to secure the children who are in the care and custody of her husband.

5.The typed set of papers furnished by the petitioner clearly indicates that due to matrimonial dispute, while the children are with her husband, the petitioner has left her husband and living separately. Already divorce proceeding is being initiated by the husband and the petitioner, who is the wife, has initiated DVOP proceeding and the same are pending.

If she want the custody of the children, the petitioner has to approach the appropriate forum where the matters are pending and seek remedy



HCP(MD)No.2113 of 2022

establishing her rights. Habeas Corpus Petition is not a alternate mode for getting custody of the children. Hence, this Habeas Corpus Petition is dismissed.

(G.J.,J.) (S.M.,J.)
02.01.2023

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

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



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