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H.C.P.No.2065 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

H.C.P.No.2065 of 2024

S.R.Archana

... Petitioner

Vs.

1.The Commissioner of Police,
Egmore, Chennai.

2.Inspector of Police,
V1 All Woman Police Station,
Villivakkam.

3.N.M.Vinodh Kumar

... Respondents

Prayer: Habeas Corpus Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Habeas Corpus, to direct the 1st and 2nd respondent to produce the petitioner's new born child Jai Dev.N.V. S/o.Vinod Kumar 8 months baby before this Court from the custody of the 3rd respondent and hand over to the petitioner.



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For Petitioner : Mr.S.R.Archana
Party-in-Person

For R1 & R2 : Mr.E.Raj Thilak
Additional Public Prosecutor

For R3 : Mr.S.Mahimai Raj

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The present habeas corpus petition has been instituted to direct the respondents 1 and 2 to produce the petitioner's new born child Jaidev 8 months old.

2. Marriage between the petitioner and the 3rd respondent was solemnised on 13.06.2016 as per Hindu Rites and Customs. From and out of wedlock a son, who is N.V.Jaidev was born on 24.09.2023. On account of misunderstanding between the petitioner and 3rd respondent, both are living separately. The petitioner in her affidavit states that the 8 months old child had been forcibly taken away by the 3rd respondent and she was not even permitted to see the child, which resulted in institution of complaint before various authorities including Child Welfare Committee. Since the initiative



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yielded no result, the present habeas corpus petition came to be instituted.

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3. Admittedly, the child was 8 months old when the complaint was filed by the petitioner. Now the baby is about one year old. By way of an interim order, we have granted custody of the baby to the mother, since the baby was 10 months old at the time of passing of the interim order by this Court. Now the baby is with the custody of the petitioner / mother.

4. Mr.S.Mahimai Raj, learned counsel for the 3rd respondent would contend that the petitioner is incapable of taking care of child. She, who voluntarily handed over the child to the family of the 3rd respondent and the parents of the 3rd respondent were looking after the child. Thus, the petitioner is not entitled to seek custody of the child in the present habeas corpus petition.

5. The learned counsel for the 3rd respondent though raised several allegations, which all are relating to matrimonial dispute and deserves no adjudication from the hands of this Court in the present habeas corpus petition.



6. The petitioner appearing in person today along with the child also made certain serious allegations against the 3rd respondent and his parents.

She has narrated several incident to establish that she was being harassed at Paramakudi in the house of the 3rd respondent and further she states that the child was also not handled properly.

7. May that as it be, admittedly, the child is now aged about one year. Section 6 of the Hindu Minority and Guardianship Act, 1956 would be relevant to take a decision in the present petition, which reads as under;

*“6. Natural guardians of a Hindu minor.—
The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are— (a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; (b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;
(c) in the case of a married girl—the husband:
Provided that no person shall be entitled to act as*



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the natural guardian of a minor under the provisions of this section— (a) if he has ceased to be a Hindu, or (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

8. Sub Clause (a) to Section 6 of the Act stipulates the custody of minor who have completed age of five years shall ordinarily be with the mother.

9. The petitioner is well educated woman and a daughter of Senior Lawyer, who is practising at Madras High Court for over 55 years. She has articulated her case by placing the relevant facts, which would be sufficient for this Court to form an opinion that she is capable of handling her own son aged one year. The allegation that the petitioner is incapable of looking after the child is incorrect and this Court could observe the conduct behaviour of the petitioner inside the Court Hall along with her child.

10. That being the factum, we are not inclined to appreciate the contentions raised by the 3rd respondent that the petitioner is incapable and not mentally sound enough to look after the child. Such baled allegations



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deserve no consideration from the hands of this Court. Child being one year old, the legal custody must be with the mother. Even as per the provisions as stated above. Now for the past about 4 months the child is with the petitioner and she is taking care of the child. That being so, the parties are at liberty to resolve their matrimonial disputes in the manner known to law by approaching the competent Forum of law.

11. With these liberty, the Habeas Corpus Petition stands allowed. No costs.

[S.M.S., J.] [A.D.M.C., J.]
25.09.2024

Jeni
Index : Yes
Neutral Citation : Yes
Speaking order / Non-speaking order



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To

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