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HCP.No.2454 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.2454 of 2024

M.Sundari

... Petitioner

Vs.

State rep by

1.The Superintendent of Police,
District Superintendent Office,
Erode District,
Erode.

2.The Inspector of Police,
All Women Police Station,
Erode District.

3.M.Sureshkumar

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the 2nd respondent herein to produce the Petitioner's minor grandchild Subachezhiyan, S/o.Suresh Kumar aged about 10 years, who is now illegally detained by the 3rd respondent before this Court and hand over to the Petitioner.

For Petitioner

: Mr.K.Gandhi Kumar



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For Respondents

: Mr.R.Muniyapparaj
Additional Public Prosecutor
asst. Mr.M.Sylvester John

ORDER

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

The Writ of Habeas Corpus Petition has been instituted to direct the 2nd respondent to produce the petitioner's minor grandson Subachezhiyan, S/o.Suresh Kumar aged about 10 years.

2. The grievance of the petitioner is that, after the death of her daughter by committing suicide, she is looking after the two children born from and out of the wedlock between the petitioner and the 3rd respondent, who is her Son-in-law. Suddenly, the 3rd respondent took away the minor boy aged about 10 years without the consent of the petitioner. The petitioner thus filed a complaint and consequently, instituted the present Writ of Habeas Corpus Petition.

3. Both the petitioner, 3rd respondent and the minor grandson Subachezhiyan are present before this Court.



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4. We have examined the parties. After the death of the daughter of the petitioner, the 3rd respondent got married with another women, who has a female child. Presently, the 3rd respondent is taking care of his 2nd wife, her daughter born through her 1st husband and his son, who is the detenue namely Subachezhiyan. Certain minor disputes exist between the petitioner and the 3rd respondent. The children were looked after by the petitioner, after the death of her daughter.

5. The 3rd respondent is the biological father of the minor son Subachezhiyan and admittedly, the girl child is with the custody of the petitioner. The 3rd respondent has no objection for the same. However, the complaint raised by the 3rd respondent is that the petitioner is not allowing him to meet his daughter, on the ground that he has taken away the son from the custody of the petitioner.

6. We have examined the minor child. He said that he is willing to live with his father, and the 2nd wife of the 3rd respondent is taking care of him and he has not made any complaint against his father.



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7. In view of the fact that there is no serious dispute between the petitioner and the 3rd respondent and both of them are interested in protecting the life of the minor children, we have suggested for an amicable solution enabling the children to grow in a better atmosphere. The education of the children, their livelihood and their future are to be protected. The petitioner though aged about 65 years, is capable of looking after her minor granddaughter. She is hale and healthy and capable of upbringing the daughter of the 3rd respondent. The 3rd respondent has no serious dispute on that.

8. After discussion the parties have mutually agreed to make arrangements to meet the children. Accordingly, a Memorandum of Understanding (MoU) is entered into between the parties. The MoU entered between the parties is mutually signed by the petitioner and the 3rd respondent, and endorsed by the learned counsel appearing on behalf of the petitioner. The terms of understanding are recorded herein,

“a) (i) That the first party herein permits the second party to visit his daughter named S.SUPAYAZHINI aged about 12 years, at any common place or the place where mutually agreed by both the parties. Provided, the first party agrees to produce the granddaughter at such place and time as agreed.



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(ii) That the Second party herein permits the first party to visit her grandson named S.SUPACHEZHIYAN aged about 10 years, at any common place or the place where mutually agreed by both the parties. Provided, the second party agrees to produce his son at such place and time as agreed.

b) (i) That the second party herein permits the first party to take her grandson named S.SUPACHEZHIYAN out as her will at any place with prior information. For that the second party has to hand over his son around 9.00.A.M at any common place and likewise the first party after spending time with her grandson, safely hand over him to the second party on or before 5.00.P.M on the same day.

(ii) That the first party herein permits the second party to take his daughter named S.SUPAYAZHINI out as his will at any place with prior information. For that the first party has to hand over her granddaughter around 9.00.A.M at any common place and likewise the second party after spending time with his daughter, safely hand over her to the first party on or before 5.00.P.M on the same day.

c) If any one violates these conditions for visiting/taking out of the children, the aggrieved party will approach the jurisdictional



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police/competent court and workout their remedies.

d) BOTH THE PARTIES shall scrupulously comply the terms and conditions of this final Compromise Memorandum of Undertaking.”

9. In view of the mutual understanding made between the parties, no further adjudication is required and more so, the minor boy is not under illegal detention and he is living with the 3rd respondent, who is the biological father of the minor boy. The parties are directed to comply with their own undertaking without committing any default.

10. With these observations, the Habeas Corpus Petition stands disposed of.

[S.M.S., J.]

[M.J.R., J.]

11.11.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

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1. The Superintendent of Police,
District Superintendent Office,
Erode District,
Erode.
2. The Inspector of Police,
All Women Police Station,
Erode District.
3. The Public Prosecutor,
Madras High Court.



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S.M.SUBRAMANIAM, J.
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M.JOTHIRAMAN, J.

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