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HCP.No.2580 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P.No.2580 of 2024

S.Poojavarshini

... Petitioner

Vs.

1.The Superintendent of Police,
Puducherry North,
Puducherry.

2.The Inspector of Police,
Dhanvanthri Nagar Police Station,
Tindivanam Main Road,
Opposite to Jipmer Campus,
Adjacent to Puducherry Armed Police Complex,
Puducherry.

3.Sathiyapramond.K.R

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, directing the 2nd respondent to produce the petitioner's daughter Suja aged about 2 ½ years before this Court from the custody of 3rd respondent and hand over to the petitioner.

For Petitioner

: Mr.L.Infant Dinesh

For Respondents

: Mr.E.Raj Thilak
Additional Public Prosecutor



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ORDER

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

The Writ of Habeas Corpus has been instituted to direct the 2nd respondent to produce the minor girl child namely Suja, aged about 2.5 years. The marriage between the petitioner and the 3rd respondent was solemnized on 27.01.2020 in accordance with the Hindu Rites and Rituals. From and out of wedlock, a girl child was born on 04.12.2021 and named as Suja, presently aged about 2.5 years. The present petition has been instituted mainly on the ground that the petitioner/mother was prevented from visiting the child in the house of the parents of the 3rd respondent. Admittedly, the 3rd respondent is presently working at Bangalore. For the first 1 ½ years from the date of delivery, the petitioner/mother was looking after the child in her in-laws' house and thereafter, she is attending her work at Chennai and visiting the child twice in a week by travelling from Pondicherry to Chennai. When the parents have not allowed the petitioner/mother to see her daughter, she filed a police complaint, which resulted in filing of the present Habeas Corpus Petition.

2. The parties are present. We have examined the parties. There is no serious matrimonial dispute exist between the petitioner and the 3rd respondent.



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Both are ready and willing to resume the matrimonial home. However, based on certain flimsy allegations, the parents of the 3rd respondent are not willing to hand over the child to the petitioner/mother. The 3rd respondent informed before us that he will be transferred to Chennai soon from Bangalore and he is ready to resume the matrimonial home with the petitioner. In such circumstances, the petitioner also agreed to resume the matrimonial home. However, she wants to spend some time along with her 2.5 years old child in her parents' house.

3. We are of the opinion that, all such differences of opinion can be sorted out between the parties either by themselves or with the assistance of the elders of the family.

4. As far as the custody of 2.5 years old child is concerned, Section 6(a) of Hindu Minority And Guardianship Act, 1956 enumerates that,

The natural guardian 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



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of a minor who has not completed the age of five years shall ordinarily be with the mother;”

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5. Admittedly, the child is aged about 2.5 years. Mother wants to take care of the child. Admittedly, the 3rd respondent is not residing along with the child and he is presently working at Bangalore. When the custody of 2.5 years old child comes, whether it is to be with the mother or with the grand parents, the Court has to consider the custody to the mother at the 1st instance. If the mother is incapable then alone an alternate suitable arrangement is to be considered.

6. In the present case, the petitioner/mother is employed and capable and willing to take care of 2.5 years old child. Therefore, the child cannot be with the custody of the grand parents, more specifically, when the father of the child is also working at Bangalore.

7. Under these circumstances, we handed over the custody of the child to the petitioner/mother forthwith. She has taken custody and she is at liberty to have the custody of the child. The 3rd respondent is at liberty to make necessary arrangements to come over to Chennai and in such circumstances,



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petitioner and the 3rd respondent are at liberty to resume the matrimonial home for leading peaceful and happy life.

8. Accordingly, the Habeas Corpus Petition stands disposed of.

[S.M.S., J.]

[V.S.G., J.]

21.10.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

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