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HCP.No.2995 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM :

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

H.C.P.No.2995 of 2024

Tamilselvi

...

Petitioner

Vs.

1.State
Rep by the Superintendent of Police,
Salem District, Salem.

2.The Inspector of Police,
Mecheri Police Station,
Salem District.

3.Santhosh

...

Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to direct the respondents 1 & 2 to produce the petitioner's minor daughter, Thanishka, D/o.Santhosh, aged about 6 years, from the illegal custody of the 3rd respondent before this Court and hand over her custody to the petitioner herein.

For Petitioner : Mr.A.Ashok Kumar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

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

The Writ of Habeas Corpus petition has been instituted to direct the respondents 1 & 2 to produce the petitioner's minor daughter, Thanishka, D/o.Santhosh, aged about 6 years.

2.The marriage between the petitioner and the third respondent was solemnised on 05.07.2012. From and out of their wedlock, two children were born. A son, namely, Nivish, born on 22.11.2014 and aged about 10 years. Detenue daughter, Thanishka, born on 26.10.2017, presently 6 years old. The boy is studying 5th standard. On account of the matrimonial dispute between the petitioner and the third respondent, they are living separately.

3.The petitioner would submit that she was forcibly driven from the matrimonial home by the third respondent and the two children were taken illegal custody by the third respondent. The third respondent has not maintained the children himself, but allowed his elder sister to maintain his two children, who has harassed the children. The boy aged about 10 years willingly joined the petitioner



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and refused to go along with the third respondent. Since the detainee minor girl was threatened by the sister of the third respondent, the present petition came to be instituted seeking custody of the minor girl.

4.We have examined the parties. Minor son Nivish, aged about 10 years, is capable of understanding the dispute between his father and mother and the Court proceedings. He is studying 5th standard. He informed the Court that the elder sister of the third respondent had ill-treated him and his sister, who is the detainee. Since the ill-treatment was intolerable, he had voluntarily joined the petitioner/mother. He says that now he is happy with the petitioner/mother and his younger sister is suffering from the hands of the elder sister of the third respondent.

5.We have examined the third respondent Mr.Santhosh. He is working as a Lorry Driver and frequently he goes to other places. He cannot maintain the girl child since he is frequently travelling. Therefore, he allowed the minor daughter to stay in his elder sister's house.



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6. We have examined the minor girl. She appears to be frightened and by appearance, she seems to be sad. She is unable to express anything, in words, but started crying. We have assessed the situation carefully in the best interest of the children. The boy aged about 10 years voluntarily joined his mother/ petitioner. The minor girl is now under the custody of the elder sister of the third respondent, which is certainly not preferable. Further, the third respondent informed us that his elder sister is having a son and he is also in the same house. When the girl grows up, it may cause certain inconvenience to the detainee girl, in view of the nature of the relationship between the minor girl and the son of the elder sister of the third respondent.

7. Courts have to take into consideration family circumstances, nature of relationship and other aspects in the “best interest of the child”. The child is now unable to speak anything, as she is so frightened in front of the third respondent, who is accompanied by his mother and elder sister in the Court Hall.

8. Considering the fact that the third respondent is not in a position look after the interest of the minor girl child, aged about 6 years and further considering the



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fact that the elder blood brother of the detenue minor girl is with the custody of the petitioner/mother, we are inclined to permit the minor girl child, aged about 6 years, to accompany her mother and her own brother. Even under Section 6 (a) of the Hindu Minority and Guardianship Act, 1956, the custody of a minor, who has not completed the age of 5 years shall ordinarily be with the mother. Though in the present case, the minor is aged about 6 years, since her custody with the father is not desirable on account of the fact that the father is not looking after the detenue minor girl, we are inclined to allow the custody of the minor girl to the petitioner/mother. The third respondent is at liberty to approach the competent Court for the purpose of securing visitation rights. The matrimonial dispute between the parties can be resolved in the manner known to law.

9.The third respondent is directed not to take illegal custody of the minor girl child, aged about 6 years. In the event of any such illegal custody or intervention by the third respondent with the custody of the minor girl, the petitioner is at liberty to approach the jurisdictional police for initiation of appropriate action.



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

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[S.M.S., J.] [M.J.R., J.]
25.11.2024

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To

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Rep by the Superintendent of Police,
Salem District, Salem.

2.The Inspector of Police,
Mecheri Police Station,
Salem District.

3.The Public Prosecutor,
Madras High Court.



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