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H.C.P.No.34 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

H.C.P.No.34 of 2024

Nikita Chandrakant Kadam

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Commissioner of Police,
Tambaram City Police,
Sozhinganallur, Chennai – 600 119.

2.The Inspector of Police,
Perumbakkam Police Station,
Pallikaranai, Chennai – 600 119.

3.Achukatla Mohammad Sajid

4.Achukatla Abdul Kareem

5.Achukatla Samshad Begum

... Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Habeas Corpus, to direct the respondents 1 & 2 herein to produce the minor child viz.,



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Sunaira i.e., the daughter of the petitioner before this Court from the illegal custody of the respondents 3 to 5 and to handover the custody of the minor child viz., Sunaira to the petitioner.

For Petitioner : Mr.D.Kamatchi
For R1 & R2 : Mr.E.Raj Thilak,
Additional Public Prosecutor
For R3 to R5 : Mr.R.Bharath Kumar

ORDER

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

While the third respondent herein is the husband of the petitioner, the respondents 4 & 5 are the parents of the third respondent.

2. The petitioner herein, has given birth to a girl child on 16.03.2020. It appears that there were matrimonial disputes between the petitioner and the third respondent herein. The respondents 3 to 5 are the residents of Andhra Pradesh. During the course of the matrimonial life, the petitioner had left her minor daughter with the respondents 4 & 5 at Andhra Pradesh on 10.12.2022.

3. It is now alleged that the respondents 3 to 5 are refusing to



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handover the child to the petitioner, which prompted her to give a complaint on 05.03.2023 which was registered in C.S.R.No.226/2023.

On 13.06.2023, the petitioner had also filed a petition under the provisions of the Domestic Violence Act, 2005, before the XVIII Metropolitan Magistrate, Saidapet and among the various prayers sought for therein, she had also sought for the custody of the child under Section 21 of the Act. However, without pursuing the DV proceedings, she has preferred the present Habeas Corpus Petition, alleging that her minor daughter is in the illegal custody of the respondents 3 to 5.

4. The various factual allegations made by the learned counsel for the petitioner against the third respondent herein, has been stoutly denied by the learned counsel for the respondents 3 to 5.

5. This Court, exercising its powers under Article 226 of the Constitution of India, will not venture to adjudicate such disputed facts and the appropriate course of remedy available to the parties, will be to prove or disprove these facts before the concerned Court of law.

6. However, pending the Habeas Corpus Petition, we had taken



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into consideration the welfare of the minor daughter of the petitioner and the third respondent and with a hope that they would mend their disputes for the sake of the child, we had preferred the parties to the Tamil Nadu Mediation and Conciliation Centre, attached to the Madras High Court on 31.01.2024. Thereafter, the conciliation continued for a considerable time and ultimately, by a report dated 01.04.2024, the Mediation Centre had reported that no consensus arrived between the parties.

7. In the interregnum, when the Habeas Corpus Petition was pending, we had also passed interim orders on 27.02.2024 and 01.03.2024, for an interim custody of the minor child to the petitioner, which was mutually agreed by the parties. Thereafter, the custody of the child was once again handed over to the respondents 3 to 5.

8. The mediation having failed and since the disputed facts are involved in the present Habeas Corpus Petition, the parties are granted liberty to redress their grievances before the appropriate Court of law for the custody/guardianship of the child. However, since we are of the view that the child being presently in the custody of her father, cannot be



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termed to be illegal, the prayer sought for in the present Habeas Corpus Petition does not deserve consideration. More particularly, when the petitioner had invoked the provisions of the Domestic Violence Act and filed a petition before the concerned Magistrate, seeking for custody of the child, this Court will not parallelly adjudicate her custodial rights in the present Habeas Corpus Petition. Accordingly, we are of the view that the present Habeas Corpus Petition itself is a abuse of process of law.

9. In view of the above observations and findings, the Habeas Corpus Petition stands dismissed. However, we would hasten to add here that the petitioner would always be at liberty to seek for visitation rights over her minor daughter from the appropriate Court of law.

[M.S.R., J]

[S.M., J]

02.04.2024

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes/No

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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

Sni

To

1.The Commissioner of Police,
Tambaram City Police,
Sozhinganallur, Chennai – 600 119.

2.The Inspector of Police,
Perumbakkam Police Station,
Pallikaranai, Chennai – 600 119.

3.The Public Prosecutor,
High Court, Madras.

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