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HCP.No.2556 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

H.C.P.No.2556 of 2023

S.Vignesh

.. Petitioner

Vs.

1.The Commissioner of Police,
Tambaram Chennai.

2.State rep. by
The Inspector of Police,
Pallavaram All Women Police Station,
Chennai.

3.Poorani

4.Karthik

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a writ of Habeas Corpus, directing the respondents 1 and 2 to produce the petitioner's minor child namely Sriya, aged about 6 years, before this Court from the custody of the third respondent.

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For Petitioner : Mr.S.L.Venkatesan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by
Mr.C.Aravind
for R1 and R2

Mr.Sankara Subbu for R3

Notice - not ready for R4

ORDER

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

The petitioner and the third respondent, who are husband and wife, have been living separately for the past few years. Since the custody of their minor girl child, aged about 6 years, was retained by the third respondent herein, the present Habeas Corpus Petition has been filed.

2. Mr.Sankara Subbu, learned counsel entered appearance for the third respondent.

3. It is alleged by the petitioner that the third respondent is having an



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illegal intimacy with the fourth respondent. However, such a statement has been stoutly denied by the third respondent herein, and as per her statement, the fourth respondent is only a driver, who has already been dismissed from the service and that she has no relationship whatsoever with the fourth respondent as on date.

4. When the learned counsel for the petitioner submitted that the third respondent had not been permitting the petitioner to visit his child, we had passed an interim order on 11.01.2024 in the present Habeas Corpus Petition, permitting the petitioner to visit his minor daughter at the third respondent's house. This said order reads as follows:

"The grievance of the petitioner seems to be that since the third respondent herein, is living with the fourth respondent, the custody of the child with the third respondent, may not be appropriate.

2. However, the learned counsel for the third respondent would submit that the fourth respondent is only



a Driver, who has already been dismissed from service and the third respondent has got no relationship with the fourth respondent, as on date.

3. This Court, exercising its powers under Article 226 of the Constitution of India, will not venture into such disputed questions of fact and that the parties are at liberty to work out their remedy in the appropriate Court of law, seeking for custody of the child.

4. At this juncture, the learned counsel appearing for the petitioner would submit that the third respondent herein, is not permitting the petitioner to visit the child, being conscious of the fact that the petitioner herein, who is the father of the minor child aged about 6 years, would have legal entitlement to visit his daughter.

5. The learned counsel for the third respondent submitted that the third respondent has no objection at all for the petitioner to visit the minor child at her residence. Such a statement is hereby recorded.



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6. *In the light of the submissions made, the petitioner is granted liberty to visit his minor daughter at the third respondent's house at Plot No.4/29, 1C, Yasu Flats, Griffith Street, Pallavaram, Chennai – 600 043, once in a week, preferably during the weekends, after giving at least 24 hours prior intimation to the third respondent herein. The third respondent shall ensure that the petitioner has full access over the minor daughter during such visitation.*

7. *Call the matter on 04.03.2024."*

5. Thereafter, the aforesaid order came to be modified on 04.03.2024 in the following manner:

"After the earlier interim order was passed on 11.01.2024, permitting the petitioner to visit his minor daughter once in a week, after giving appropriate notice to the third respondent, both the parties have expressed their grievances stating that the order is not feasible for proper compliance.



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2. *We do not intend to go into the allegations made by both the parties. Nevertheless, the inconvenience seems to be that the father has not given sufficient notice to the third respondent and therefore, she has not granted interim custody of her minor daughter.*

3. *If a specific time is allotted for the father to visit his minor daughter, the grievance could be redressed. When such a suggestion was made, both the counsels, on instructions from their respective parties, agreed for the father to meet his minor daughter during the fixed hours.*

4. *Accordingly, the petitioner herein, is granted liberty to visit his minor daughter and have an interim custody of the child on every Sundays between 10 am to 1 pm. The third respondent shall ensure that the petitioner has full access over his minor daughter during such visitation. Likewise, the petitioner herein shall also positively handover his minor daughter at or before 1 pm.*



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5. Post the matter on 25.03.2024."

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6. Incidentally, a petition in G.W.O.P.No.357 of 2023 has been preferred by one of the parties before the Principal District Court, Chengalpet, seeking for appointment of a guardian for the minor child and the same is listed for hearing on 05.07.2024. The third respondent herein had also filed a petition for divorce in O.P.No.673 of 2022 before the Sub Court, Alandur, which is listed for hearing on 04.04.2024.

7. The prayer in the present Habeas Corpus Petition is for handing over the custody of the minor child to the petitioner herein. When the legal proceedings for appointment of guardianship has already been preferred before the concerned Court, in which custodial rights can also be agitated, it would not be appropriate to parallely adjudicate the custodial rights in the present Habeas Corpus Petition, more particularly, when there are factual disputes. However, being conscious of the fact that the interim arrangements for the petitioner to visit his minor child at the residence of the third respondent herein has been continuing from 11.01.2024, we are of the view



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that such an arrangement for visitation shall be continued, until the pendency of the G.W.O.P.

8. At this juncture, the learned counsel for the petitioner made a request for change of timings of the visitation rights from 10.00 a.m - 01.00 p.m., on every Sundays to 03.00 p.m - 08.00 p.m., on every Sundays.

9. Learned counsel for the third respondent, on instructions, agreed to such a change in the timings.

10. We have taken note of the fact that both the divorce O.P as well as G.W.O.P are pending in two different Courts. Since the parties are one and the same, it would be appropriate that both the matters be heard together on the same hearing dates. Accordingly, in exercise of our powers under Article 226 of the Constitution of India, we hereby direct that the proceedings in O.P.No.673 of 2022 pending on the file of the Sub Court, Alandur be forthwith transferred to the Court of Principal District Judge, Chengalpet, for



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being heard along with G.W.O.P.No.351 of 2023, which is listed for hearing on 05.07.2024.

11. In the light of the above observations and findings, no further orders are required to the prayer sought for in the present Habeas Corpus Petition.

12. Accordingly, this Habeas Corpus Petition stands closed.

(M.S.R.,J.) (S.M.,J.)
25.03.2024

NCC : Yes / No
Index : Yes / No
Anu

Note to office: Issue order copy on 28.03.2024

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

Anu

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1.The Commissioner of Police,
Tambaram Chennai.

2.The Inspector of Police,
Pallavaram All Women Police Station,
Chennai.

3.The Public Prosecutor,
Madras High Court

4.The Sub Court, Alandur.

5.The Principal District Court,
Chengalpet.

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