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H.C.P.No.3190 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2024

CORAM:

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

H.C.P.No.3190 of 2024

Arunkumar

... Petitioner

Vs.

1.The Commissioner of Police,
Police Commissioner Office,
Coimbatore.

2.The Inspector of Police,
Kuniyamuthur Police Station,
Coimbatore City.

3.Mohammed Thawfeek

4.Abdul Kafoor

... Respondents

PRAYER: Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents 1 and 2 to produce the petitioner's son Minor Akilesh, aged 7 years from the illegal custody of respondents 3 and 4 before this Court and set him at liberty.



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For Petitioner : Mr.M.Saravanakumar
For R1 & R2 : Mr.R.Muniyapparaj
Additional Public Prosecutor
For R3 & R4 : Ms.U.Ramya
For petitioner's wife/Kanchana : Mr.R.Bharath Kumar

ORDER

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

A Writ of Habeas Corpus has been instituted to direct the respondents 1 and 2 to produce the petitioner's minor son Akilesh, aged about 9 years, from the custody of the respondents 3 and 4.

2. The marriage between the petitioner and one Smt. Kanchana was solemnised on 15.11.2012 at Arulmigu Rathinavinayagar Temple, R.S.Puram, Coimbatore, as per the Hindu rites and customs. From and out of the wedlock, a male child was born namely Akilesh, who is presently aged about 9 years. When the matrimonial dispute arose between the petitioner and his wife Kanchana, a petition for restitution of conjugal



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rights was filed and thereafter, a petition for dissolution of marriage was instituted.

3. The respective learned counsels appearing on behalf of the petitioner and Smt. Kanchana would submit that decree of divorce was granted by the learned Subordinate Judge in H.M.O.P.No.93 of 2019. Challenging the said judgment, an appeal in CMA No. 9 of 2024 is filed before the 5th Additional District Court, Coimbatore and the same is pending.

4. After obtaining a decree of divorce, Smt. Kanchana got married to the third respondent namely Mohammed Thawfeek and presently she is living with her second husband, maintaining the minor child.

5. The petitioner, Smt. Kanchana and the detinue minor boy Akilesh are present before this Court today. We have examined the minor boy, who in turn unhesitatingly stated before this Court that he is not willing to go with his father and would continue to live with his mother,



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grandmother, uncle and aunt. The mother and her second husband are visiting the child during weekends and during weekdays, the minor boy is being taken care of by his maternal grandmother, uncle and aunt, who all are residing at Mettupalayam.

6. The minor boy informed this Court that he is willing to live along with his mother and he will not go with his father. When the minor boy is aged about 9 years and expressed his willingness to live along with his mother, this Court cannot form an opinion that the minor boy is under illegal detention.

7. The right of the child is of paramount importance. The Courts are expected to consider the wishes of the child along with the best interest of the child so as to form an opinion regarding custody. The minor boy is aged about 9 years and he is capable of taking a decision to an extent that he is willing to live with his mother and grandmother. Since the boy is living with his mother right from his birth and for the past about 5 years, the minor boy has no contact with his father, now any change of custody



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would cause prejudice to the interest of the child and it would affect the normal life of the child.

8. Child rights being recognised globally and India being party to such agreement and conventions, the Courts are expected to respect the rights of the children and it is to be protected. Children cannot be treated as commodities. The feelings, emotions, likes and dislikes of the children are to be taken into consideration by the parents, Courts and the society. Children being the backbone of our great nation, their interest is of paramount importance for achieving the constitutional philosophy and ethos. Child must be provided with a good environment, enabling him/her to pursue his/her education in a peaceful atmosphere and with a happy mind.

9. Article 51A of the Constitution of India enumerates the fundamental duties of the citizen. Article 51A(k) stipulates that “*who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.*” The



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aforsaid provision was inserted by the Constitution (86th amendment) Act, 2002 w.e.f 1.4.2010.

10. In order to provide an opportunity for education to a child, it requires a good environment, atmosphere, parental care etc., and in this context, Courts are bound to consider the best interest of the children along with his/her wishes and other mitigating circumstances.

11. In the present case, the minor detainee boy is under the care of his mother right from his birth. He is aged about 9 years and he is capable of expressing his feelings, emotions and wishes. The minor boy in clear terms informed before this Court that he is willing to live with his mother but not interested even to see his father.

12. We heard the petitioner, who is the father of the minor boy, who has also expressed emotions and feelings. But on account of estrange relationship between the petitioner and his erstwhile wife Kanchana, this Court is not in a position to reconcile the damage already caused on



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account of matrimonial dispute between the parties. More so, the minor boy is not under the illegal detention and that being the factum, the relief as sought for in the present Habeas Corpus Petition, cannot be considered.

13. Accordingly, the Habeas Corpus Petition stands dismissed. It is made clear that the petitioner shall not disturb the peaceful living of the minor boy, interfere with his activities or take forcible custody. In the event of any such allegations, the mother of the minor boy Kanchana is at liberty to approach the jurisdictional Police for initiation of appropriate actions in the manner known to law. No costs.

(S.M.S, J.)

(M.J.R, J.)

19.12.2024

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

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

Sni

To

- 1.The Commissioner of Police,
Police Commissioner Office,
Coimbatore.
- 2.The Inspector of Police,
Kuniyamuthur Police Station,
Coimbatore City.
- 3.The Public Prosecutor,
High Court of Madras, Chennai.

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