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H.C.P.No.3223 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2025

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

H.C.P.No.3223 of 2024

Lakshmi
D/o Krishnan
W/o Boopathy

.. Petitioner

v.

1. The State rep.by
The Superintendent of Police
Office of the Superintendent of Police
Tiruppur District, Tamil Nadu

2. The Station House Office (SHO)
All Women Police Station
Palladam, Tiruppur District
Tamil Nadu

3. Boopathy
S/o Palanisamy .. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus, directing the 3rd respondent to produce the petitioner's three minor children (i) Lineesh (Male/Age-4 years), (ii) Srithika (Female/Age-2 years) & (iii) Sashanth (Male/Age-2



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years) before this Hon'ble Court, who have been unlawfully and illegally detained by the 3rd respondent and handover custody of the said three children to the petitioner and set them at liberty.

For Petitioner :: Mr.Prakash Adiapadam

For Respondents :: Mr.R.Muniyapparaj
Additional Public Prosecutor
for R1 & R2
Mr.T.Gowthaman
Senior Counsel for
Mr.T.Balaji for R3

ORDER

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

The writ of habeas corpus has been instituted to direct the third respondent to produce the three minor children, namely, (i) Lineesh, Male aged 4 years, (ii) Srithika, Female, aged 2 years & (iii) Sashanth, Male, aged 2 years. The second and third children are twins. The first son Lineesh is a special child. The marriage between the petitioner and the third respondent was solemnized on 14.06.2019 as per Hindu rites and customs. From and out of the wedlock, three children were born and they are about 4 years and 2 years respectively. Misunderstanding arose and the petitioner left the matrimonial home. The petitioner is now working in a company and being



supported by her parents and brother and sister. The petitioner would submit that she is deprived of having custody of her three children and the third respondent is not allowing the petitioner to take care of the children.

2. We have examined the petitioner and the third respondent. Matrimonial disputes exist between the petitioner and the third respondent. Those disputes are to be resolved by approaching the competent Court of law. In habeas corpus petition, High Court cannot resolve the matrimonial disputes. As far as the children are concerned, admittedly, three children are aged about 4 years and 2 years respectively. Section 6(a) of the Hindu Minority and Guardianship Act, 1956 enumerates that “in the case of a boy or an unmarried girl, the father, and after him the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother”.

3. In the present case, the petitioner claims that she is deprived of the custody of the three minor children, aged about 4 years and 2 years respectively. In view of the fact that the minors are in tender age and the



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care of the mother is paramount and natural, and the provision also emphasises that the custody of minor who has not completed the age of five years shall ordinarily be with the mother, this Court is of the considered opinion that the custody of the three children must be with the mother. Since the petitioner and the third respondent are residing in the same house, there may not be any difficulty in maintaining the children together. However, the third respondent is restrained from taking any coercive action to remove the children from the custody of the petitioner without her consent. All other issues relating to matrimonial dispute and other issues can be resolved by the parties by approaching the competent Court of law. In the event of any coercive or forcible custody of the children by the third respondent from the petitioner, the petitioner is at liberty to approach the jurisdictional police for initiation of appropriate action. With these observations, the habeas corpus petition stands disposed of.

Index : yes/no
Neutral citation : yes/no

(S.M.S.,J.) (M.J.R.,J.)
22.01.2025

SS



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To

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1. The Superintendent of Police
Office of the Superintendent of Police
Tiruppur District
2. The Station House Office (SHO)
All Women Police Station
Palladam, Tiruppur District
3. The Public Prosecutor
High Court, Madras



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S.M.SUBRAMANIAM,J.

AND

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