



HCP.No.174 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 31.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

H.C.P.No.174 of 2025

Yuva Karthikha

... Petitioner

Vs.

1.The Superintendent of Police,
Dharmapuri, Tamil Nadu – 636 701.

2.The Inspector of Police,
B1 Town Police Station,
Nh 7 Hosur Krishnagiri Road, Dharmapuri,
Tamil Nadu – 636 701.

3.Dineshkumar

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, or any other appropriate writ order or direction in the nature of writ, directing the 2nd Respondent to produce the petitioner Minor Childrens Tharun Vinayakk.D aged about 6 years and Sri Shanth.D, aged about 4 years from the illegal custody of 3rd Respondent before this Hon'ble Court and



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hand over to petitioner custody and to pass any other suitable orders.

For Petitioner : Mr.M.Sundara Pandya Raja

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

The writ of Habeas Corpus has been instituted to direct the 2nd respondent to produce the petitioner's Minor Childrens viz., Tharun Vinayakk.D, aged about 6 years and Sri Shanth.D, aged about 4 years.

2. The marriage between the petitioner and the third respondent was solemnized on 28.06.2017 in Thirupathi Devasthanam Mandapam as per the Hindu Rites and Customs, in the presence of family and the relatives. The petitioner and the third respondent started their matrimonial life happily. Two male children born from and out of their wedlock and they are aged about 6 years and 4 years respectively. The petitioner states that the third respondent started ill treating her both mentally and physically.



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WEB COPY 3. Several allegations are raised in the present Habeas Corpus Petition and those allegations need not be adjudicated by the High Court in the Habeas Corpus Petition. Matrimonial disputes are to be adjudicated or resolved by approaching the competent Court or through negotiations within the family members. As far as the present Habeas Corpus Petition is concerned, both the children are young and the second boy is about 4 years. Presently, the paternal grand mother is taking care of the children. The third respondent is doing business at Dharmapuri and therefore, he may not be in a position to take care of the children. Since, the third respondent is living with his parents, but his mother is taking care of the children.

4. We have examined the parties. The petitioner raises several allegations against the third respondent. Now, she is staying at Chennai and pursuing education, she says that both her father and mother are Government servants and they are assisting her to meet out her expenditures for her education and therefore, she is capable of maintaining two children. She is having support from his parents and therefore, she may be allowed to take care of the children and pursue her education, since the third respondent is not co-operating for resumption of



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matrimonial home. The third respondent states that he is ready and willing to resume the matrimonial home. He is ready to accept the petitioner and to continue the matrimonial home.

5. Section 6(A) of the Hindu Minority and Guardianship Act 1956 reads as under:

" 6. Natural Guardians of a Hindu Minor:- The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are

(a) 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; "

6. 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. Though in the present case,



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the children are affectionate to each other and being separated on account of the matrimonial dispute by the elders of the family.

7. Article 51(A) of the Constitution of India enumerates the fundamental duties of the citizen. Article Sub-clause (k) to Article 51(A) of the Constitution of India enumerates 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 6 and 14 years". Even the Constitution reiterates the duties of the citizen, as parent or guardian. The parent would be the first choice and in the present case, both the female children must be with the custody of the mother at this tender age for their mental health and good atmosphere.

8. In view of the circumstances and considering the emotions and the wishes of the children and the mother, this Court is of the considered opinion that the children cannot be separated and they must be allowed to go together, which would be in the best interest of the children for their future. The mother will be the right person to take care of these two children. If at all the father is so affectionate with the children, he is at liberty to negotiate with the assistance of the



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elders of the family for resumption of matrimonial home or in alternate, he can support the children by providing better education and livelihood. Contrarily, the father cannot indulge in developing a dispute, more specifically, affecting the emotions and life of the children. Mental health of the children is of paramount importance. The child must be allowed to live in a happy atmosphere and at this tender age the children should not be pressurised even in the matter of place of residence.

9. The elder boy aged about 6 years and seems to be attached with the petitioner/mother. When we examined the elder boy, we found that he has been tutored by his grand mother. The younger boy though has not shown any interest to join with the mother, this Court is of the considered opinion that the children cannot be separated. The second boy is unable to understand the consequences as the elder boy informed this Court that he has been told by his grand mother to say before the Court that he is interested in living with his father.

10. Taking overall circumstances and situations, we are of the opinion that the mother will be the best person to look after the best interest of the children.



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The mother is capable of maintaining the children. Both the parents of the petitioner/mother are Government servants and they are supporting her. Under these circumstances, it is for the parties to resolve the matrimonial dispute through negotiations or through Mediation as the case may be.

11. As far as the custody of the children is concerned, this Court is of an opinion that both the children are of tender age and therefore, they should be under the custody of the petitioner/mother and accordingly, the custody of the two children are handed over to the petitioner/mother forthwith. The third respondent is at liberty to approach the competent Forum for seeking Visitation or other rights as the case may be or to resolve the matrimonial disputes amicably.

12. With these directions, the Habeas Corpus Petition stands disposed of.

[S.M.S., J.] [M.J.R., J.]
31.01.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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