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H.C.P.No.242 of 2026



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

H.C.P.No.242 of 2026

K.Balamurugan
S/o.Kaliyaperumal

..Petitioner(s)

Vs

1. The Superintendent of Police,
Chengalpattu District.
2. The Inspector of Police,
Selaiyur Police Station.
3. Divya
4. Dinesh

..Respondent(s)

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus, directing respondents 1 and 2 to produce the petitioner's minor daughter, namely, Shrinika aged about 4 years before this Court and handover to the petitioner.

For Petitioner(s) : Mr.M.Sathya Kumar

For Respondent(s): Mr.A.Damodaran
Additional Public Prosecutor
assisted by Mr.M.Karthikeyan
for R1 and R2

**ORDER****(Order of the Court was made by P.VELMURUGAN, J.)**

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The Writ of Habeas Corpus petition has been filed seeking a direction to respondents 1 and 2 to produce the petitioner's minor daughter, namely, Shrinika aged about 4 years before this Court and handover her custody to the petitioner.

2. It is the case of the petitioner that he married one Divya, the third respondent herein and out of the said wedlock, they were blessed with a female child, namely Shrinika, aged about 4 years. After the birth of the child, the third respondent, without any valid or reasonable cause, deserted the petitioner and the marital relationship and has been denying the petitioner access to both his wife and minor daughter, thereby interfering with his lawful rights of custody and guardianship. The petitioner has filed H.M.O.P.No.53 of 2024 seeking restitution of conjugal rights and access to the minor child, in which proceedings the third respondent has obtained an order of stay. Subsequent attempts made by the petitioner to contact his wife and child were obstructed by the family members of the third respondent. Further, it is alleged that the fourth respondent, who is the brother of the third respondent, assaulted the petitioner and caused injuries and that a complaint was lodged. While matters stood thus,



the third respondent left India along with the child without the knowledge or consent of the petitioner. Hence, the petitioner filed a complaint before the respondent-Police, but no action has been taken till date. Hence, the present petition.

3. The learned counsel for the petitioner would submit that the petitioner, being a natural guardian of the minor child under Section 6 of the Hindu Minority and Guardianship Act, 1956, is entitled to the custody of the minor. It is contended that the retention and concealment of the minor child by respondents 3 and 4 is illegal and infringes the petitioner's statutory and fundamental rights.

4. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in ***Tejaswini Gaud Vs. Shekhar Jagdish Prasad Tewari, (2019) 7 SCC 42***, wherein it has been held that a natural guardian is entitled to invoke the extraordinary jurisdiction of this Court by way of habeas corpus when a minor child is retained without consent, though the welfare of the child remains paramount and unlawful retention cannot override the lawful rights of the guardian.

5. Further reliance was placed on ***Lahari Sakhamuri Vs. Sobhan Kodali (2019) 7 SCC 311***, wherein denial of access or visitation to a natural guardian



without justifiable cause was held to amount to unlawful deprivation of parental rights, warranting judicial intervention.

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6. It is well settled that, ordinarily, disputes relating to the custody of a minor child are to be adjudicated under the [Hindu Minority and Guardianship Act, 1956](#) or the Guardians and [Wards Act, 1890](#). The jurisdiction exercised under those enactments involves a detailed enquiry, whereas the jurisdiction of a writ Court is summary in nature. Therefore, in cases requiring adjudication of disputed facts, the parties are normally relegated to the civil forum. Only in exceptional circumstances that the custody rights of the parties are examined in exercise of jurisdiction under Article 226 of the Constitution by entertaining a petition for habeas corpus. In all such cases, the welfare of the child is the paramount consideration.

7. In the facts and circumstances of the present case, the minor child is in the custody of the third respondent, who is a natural guardian, and such custody cannot be construed as illegal detention. Therefore, the decisions relied upon by the petitioner are distinguishable on facts and do not advance the case of the petitioner.



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8. In the case on hand the petitioner and the third respondent are the biological parents and natural guardians of the minor child, Shrinika and that the dispute pertains to the custody of the minor child arising out of the marital relationship between the parties. The issues raised involve disputed questions of fact requiring adjudication by leading evidence. Since efficacious remedies are available before the Family Court or the competent Civil Court under the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956, this Court is not inclined to exercise its extraordinary jurisdiction under Article 226 of Constitution of India. Accordingly, the Habeas Corpus Petition is dismissed. However, the parties are at liberty to work out their remedy relating to the custody of the minor child before the competent forum, in the manner known to law.

(P.V.,J.) (M.J.R.,J.)
09.02.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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To

1. The Superintendent of Police,
Chengalpattu District.
2. The Inspector of Police,
Selaiyur Police Station.
3. The Public Prosecutor,
High Court, Madras.



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**P.VELMURUGAN, J.
AND
M.JOTHIRAMAN, J.**

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