

(2011) 12 MAD CK 0109

Madras High Court (Madurai Bench)

Case No: H.C.P (MD) No. 1061 of 2011

Gunasekaran

APPELLANT

Vs

The Superintendent of Police,
Karur District and Others

RESPONDENT

Date of Decision: Dec. 7, 2011

Hon'ble Judges: S. Nagamuthu, J; M. Jaichandren, J

Bench: Division Bench

Advocate: P.T. Ramesh Raja, for the Appellant; A. Ramar, Additional Public Prosecutor for Respondents 1 and 2 and Mr. K. Kumaravel Mediator, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Nagamuthu, J.

The petitioner is the father of the child Santhosh, aged 2. years. The wife of the petitioner died on 1.6.2011. After that, according to the petitioner, the detenu child was kept only by him. Now, the 5th respondent who is only the grand father of the child has taken away the child and he has illegally detained the child.

2. With these allegations he has preferred a complaint to the police and since no action has been taken, the petitioner has come up with this Habeas Corpus Petition seeking a direction to the respondents 1 and 2 to produce the child before this Court and to handover the child to his custody.

3. When this Habeas Corpus Petition came up before this Court on 2.12.2011, the fifth respondent was present and he produced the child also before this Court. However, the petitioner was not present. The Learned Counsel for the petitioner submitted that the petitioner would be present before this Court on the adjourned date. Accordingly, the matter was adjourned and it is listed today for hearing.

4. Today, the petitioner is present. The respondent No.5 is also present. The fifth respondent has produced the child before this Court.

5. On enquiry, the petitioner would submit that after the demise of his wife, the child was in the custody of the 5th respondent for some time in a cordial atmosphere, and, thereafter, some misunderstanding arose between them and later, the child was taken by the petitioner and kept in his custody. On 16.4.2011, the child was, however, by force taken away by the 5th respondent.

6. The 5th respondent would have a different story. According to him, the child was all along in his custody and he has been keeping the child providing all amenities. He would also state that it will not be in the interest of the child to allow the child to be taken away by the petitioner, because the petitioner is likely to go in for the second marriage. The said statement is also recorded.

7. In view of the rival stands taken by the petitioner as well as the 5th respondent, the Learned Counsel submitted that the matter may be referred for mediation. Accordingly, we requested Mr. K. Kumaravel, the Learned Counsel, a trained mediator of this Court to mediate between the parties. After mediation efforts, he has submitted that the mediation has failed since parties are adamant sticking on their rival stands. Now, the parties are also present and the child is also produced before this Court.

8. In view of the above stand taken by the rival parities, and all the facts narrated above, we are of the view that the child is not illegally detained by the 5th respondent, and so, no direction as prayed by the petitioner can be issued by this Court. If the petitioner has got any right to claim custody of the child, he can very well seek remedy before the appropriate Court in the manner known to law. As of now, since the child is in the custody of the 5th respondent, the child will continue to be in the custody of the 5th respondent, however, subject to the outcome of any order to be passed by the competent Civil Court. The Habeas Corpus Petition stands disposed of, accordingly.