

P.N.PRAKASH, J.

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R.HEMALATHA, J.

(Order of the Court was made by P.N.PRAKASH, J.)

For the sake of convenience, the parties will be referred to by their respective names.

2. Sathya and Sivakumar are siblings and their father is one Thiyyagarajan. Sivakumar got married to Saranya and Sathya was given in marriage to Ramesh. Both families were living in Salem.

3. The Sathya-Ramesh couple was childless for a long time. However, the Saranya-Sivakumar couple was lucky to have three children viz., Kavya (11 years), Abi (10 years) and Oviya (5 years). Since the Sathya-Ramesh couple was childless, Abi was given in adoption to them, when she was hardly 3½ months old, sometime in the year 2012. Since then, Abi was being brought up by the Sathya-Ramesh couple and the Saranya-Sivakumar couple was bringing up Kavya and Oviya. While so, Ramesh died of cancer on 19.06.2019, post which, the relationship between Ramesh's family and Sivakumar's family soured.

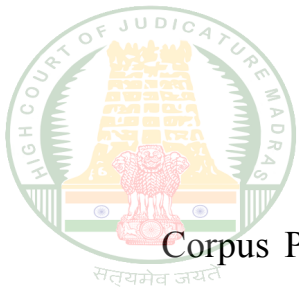


4. Alleging that Sathya is not permitting the Saranya-Sivakumar

couple free access to Abi, Saranya gave a complaint dated 27.10.2021 to the Commissioner of Police, Salem, who in turn, forwarded the petition to the Inspector of Police, AWPS, Ammapet, for enquiry. In the said complaint, Saranya has not only stated the aforesaid facts, but, has also made certain allegations against Sathya, just for giving a criminal colour to a purely civil dispute.

5. Strangely, the Inspector of Police, Ammapet AWPS registered a petition enquiry in C.S.R.No.541 of 2021, conducted enquiry, brought both the sides to the police station and informed the Child Welfare Committee (CWC), Salem. The CWC, Salem, by a reception order dated 27.10.2021, admitted Abi in Government Lifeline Trust, Reception Home, Salem. Thus, the CWC successfully took away the custody of the child, which was normally growing in the family of the adopted parents and branded it as a child in need of care and protection and handed the child over to the Lifeline Trust, by a mere reception order, without any reasons in support thereof.

6. Seeking custody of Abi, Saranya filed a Habeas Corpus Petition before this Court on 29.10.2021 and similarly, Sathya also filed a Habeas



Corpus Petition on the same day. While these Habeas Corpus Petitions were

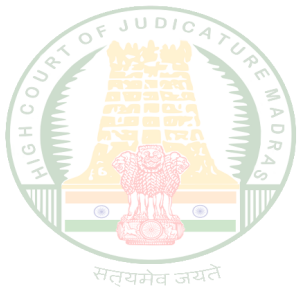
being scrutinized by the Registry, Sathya filed a petition under Article 32 of the Constitution of India in the Supreme Court, for the issuance of a writ of habeas corpus, for custody of Abi, in which, the Supreme Court passed the following order on 13.11.2021 :

”... .. The parties may appear before the High Court on 18.11.2021 on which date the High court may pass appropriate order as the learned counsel for the State assures this Court that the child will be produced before the High Court on that date.”

When these were brought to the notice of this Court by the learned counsel for Sathya on 18.11.2021, we directed the Registry to number the Habeas Corpus Petitions filed by Sathya and Saranya and post the same before us on 19.11.2021.

7. On 19.11.2021, we directed listing of these matters on 23.11.2021 with a direction to both the parties to be present before us with Abi.

8. Today, Ms.T.Sivakami, Inspector of Police, AWPS, Ammapet, Salem, Mrs.V.Thamarai and Mrs.T.Shiyamala, Members of the CWC, Salem are present before this Court.



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9. After hearing the parties for sometime in the morning session, we referred the matter to the Mediation and Conciliation Centre for conciliatory talks. During the mediation proceedings, it came to light that Abi has great love for both Sathya and Saranya; she wants all of them to live together so that she can play with her natural siblings *viz.*, Kavya and Oviya. Even according to Saranya, Abi was given in adoption to Sathya, when she was hardly 3½ months old. It was not proper on the part of the police to have entertained a complaint from Saranya, conducted an enquiry, branded Abi as a child in need of care and protection and kept her in a Home. The police should have directed the parties to settle the matter before the civil Court and if Saranya was disputing the adoption, it was for her to seek redress under the Guardianship and Wards Act, 1890, or for seeking a declaration that the adoption is null and void. The police ought not to have interfered with in a case of this nature, removed Abi, who was under the care and custody of Sathya for about 10 years and lodged her in a Home.

10. After Abi was lodged in the said reception home, she became distraught and started asking for help *via* social media. When this issue came to the notice of one of us (PNPJ), who is the Chairman of the Juvenile Justice Committee of the High Court and was incidentally one of the portfolio Judges



for Salem District, he (PNPJ) orally directed the Juvenile Justice Board

Magistrate, Salem, to find out, under what circumstances, Abi has been lodged in the said Home. The learned Magistrate visited the Home and informed the portfolio Judge (PNPJ) that Abi has been lodged in the Home, based on the orders of the CWC dated 27.10.2021 and 15.11.2021 and not on the orders of the police.

11. Though an appeal remedy is provided under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015, against the order of the CWC dated 15.11.2021, on facts, we find that the police and the CWC had acted beyond the scope of the said Act, by mechanically lodging Abi in the said Home. Abi is not an orphaned child, who is in need of care and protection. On the contrary, she has two mothers *viz.*, Saranya and Sathya, who are fighting with each other to give her care and protection. This is a matter which should not have been brought to the police station at all.

12. In our opinion, the removal of the child by the CWC from the custody of Sathya based on the police complaint of Saranya, lodging of the child by the CWC in the said Home and thereafter, handing over the custody of the child to Saranya, are clearly illegal.



13. Therefore, in exercise of our powers under Sections 226 and 227

of the Constitution of India, we hereby set aside the order dated 15.11.2021 that has been passed by the CWC, Salem and we hand over Abi to Sathya. Sathya shall permit Sivakumar, Saranya and their children, to have free access to Abi, during weekends. However, Sivakumar and Saranya shall not take custody of Abi from Sathya.

14. We place on record our deep appreciation to Ms.Ratna Thara, Mediator, for deftly handling this sensitive case.

For further proceedings, post on 21.12.2021.

[P.N.P., J.] [R.H., J.]
23.11.2021

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To

1.The Inspector of Police
AWPS, Ammapet

2.The Chairman
CWC, Don Bosco Anbu Illam Campus
230, Bretts Road, Mullavadi Gate
Salem 636 007

3.The Public Prosecutor
High Court, Madras



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H.C.P.Nos.1868 and 1892 of 2021

P.N.PRAKASH, J.
AND
R.HEMALATHA, J.

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23.11.2021