

**(2012) 01 MAD CK 0027**  
**In the Madras High Court**  
**Case No : H.C.P. (MD) No. 37 of 2012**

S. Mala

APPELLANT

Vs

Commissioner of Police, Trichy and Others

RESPONDENT

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**Date of Decision :** 18-01-2012

**Acts Referred:**

Hindu Adoptions and Maintenance Act, 1956 — Section 7

**Citation :** (2012) 3 MLJ 553

**Hon'ble Judges :** P. Devadass, J;N. Paul Vasanthakumar, J

**Bench :** Division Bench

**Advocate :** V.S. Siva Sundaram, for the Appellant; T. Mohan, Additional Public Prosecutor for R. Karunanithi, for the Respondent

**Final Decision :** Allowed

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## Judgement

N. Paul Vasanthakumar, J.—This Habeas Corpus petition has been, filed for directing the respondents 1 and 2 to produce the petitioner's

minor son by name Giridharan, aged about 4 years, before this Court and hand over the custody to the petitioner. Heard the learned counsel for

the petitioner, the learned Additional Public Prosecutor and the learned counsel for the third respondent.

2. It is stated in the affidavit filed in support of the Habeas Corpus Petition that the petitioner married her uncle's son named Siva Prakasam on

1.2.2006 and in the said wedlock, a male child was born on 15.9.2007 and they were living at Avanthiyapalayam in Erode. Her husband worked

as coolie in a textile company. On 23.11.2008, the petitioner's husband died in a road accident. After the demise of the petitioner's husband, the

petitioner and her son were neglected by her husband's family members. The petitioner while working in a banian company at Tiruppur, she stayed

in a rental house along with her colleague one Jamuna. During that period, the petitioner was not able to take care of her one year old child

Giridharan. At that time, the said Jamuna advised the petitioner that her relative, viz. Shaik Dawood, the third respondent herein and his wife are

running a child home at Sangiiiandavarpuram, Trichy and informed that they are charging Rs. 1,000/- per month for one child, being the cost for

child care. As per the advise of the said Jamuna, the petitioner went and met the third respondent and admitted her son in the child home, from

November 2009. Thereafter, she was visiting the third respondent now and then and she also paid the monthly fees of Rs. 1,000/- without any

default. In May 2011, the petitioner lost her job due to closure of dying industries at Tiruppur. Thereafter, she decided to go, to her own town at

Viliupuram and went to Trichy to take back her son from the third respondent. At that time, she found that the third respondent, without informing

the petitioner, shifted his child home to some other place. The petitioner contacted the third respondent to his cell phone, but the third respondent

refused to return back her son and he also did not inform his new address of the child Home. It is also submitted that the third respondent also

threatened the petitioner with dire consequences If she tries to take back her son.

3. The petitioner made a complaint to the first respondent on 23.6.2011 and requested to take action against the third respondent and rescue her

son from the third respondent. The first respondent forwarded the complaint to the second respondent and advised to take action on the

petitioner's complaint. As per the direction of the first respondent, the petitioner approached the second respondent and requested to rescue and

hand over her minor son to the petitioner. The petitioner further submitted a representation before the first respondent on 1.8.2011 through

registered post and even thereafter, no action was taken. Hence, she has come up with the present Habeas Corpus Petition.

4. The Habeas Corpus Petition was admitted by this Court on 9.1.2012 and the learned Additional Public Prosecutor was directed to take notice

on behalf of respondents 1 and 2. Private notice was ordered on the third respondent.

5. The third respondent appeared before this Court and produced the alleged adoption document dated 24.2.2010, stating that the detenu was

given adoption by the petitioner through the said deed. A copy of the alleged adoption deed was also produced wherein the thumb impression of

the first party was put and the name mentioned is R. Punitha. The name of the petitioner is Mala, wife of late Siva Prakasam.

6. The learned counsel for the petitioner submitted that the petitioner's name is only Mala" and she has not signed in any adoption deed/document.

The learned counsel for the petitioner submitted that the petitioner is willing to take back the detenu along with her and she will reside in her

brother's house at Viliupuram. Since the detenu is the son of the petitioner, and the third respondent having no right over the detenu, the third

respondent cannot be permitted to retain the detenu when the mother of the detenu is alive and is also willing to take her minor son along with her.

The petitioner also appeared before this Court and submitted that she will not leave her child in any other place and she is bound to look after her

minor son. The said statement is recorded.

7. The contention of the third respondent that he is claiming right over the detenu through the alleged Adoption Deed dated 24.2.2010 is

unsustainable, as admittedly, the third respondent is a Mohammedan and the petitioner (who denied the execution of the Adoption Deed) is a

Hindu. It is a well settled proposition of law that creating a relationship of parentage by adoption is unknown to Mohammedan Law as the same is

forbidden by the Quran .The Hindu Adoptions and Maintenance Act, 1956, permits adoption by an Hindu alone. Section 7 of the Act states that

any male Hindu who is of sound mind and is not a minor, has the capacity to take a son or daughter in adoption. The third respondent, being

Mohammedan, he therefore, not entitled to adopt the detenu under the Hindu Adoptions" and Maintenance Act, 1956, also. The question as to

whether a muslim can adopt any person and it is legally permissible or not, was considered by the Division Bench of the Allahabad High Court in a

decision in the case of Mohd. Atiq Khan Vs. Union of India (UOI) and Others, (Justice Markandey Katju, as he then was, and Justice Prakash

Krishna). The Division Bench relied on the Full Bench decision of the Allahabad High Court reported the case of Muhammad Allahdad Khan v.

Muhammad Ismail Khan (1888) ILR 10 All 290 wherein it was held that among the muslims, the doctrine of acknowledgement of paternity is

available and there is no question of adoption in Muslim Law. The Division Bench also relied on the view expressed in Mulla's Muslim Law vide

Chapter XVII and the principles of Mohammedan Law by Amir Ali vide Part II Chapter I.

8. In an unreported judgment of the Karnataka High Court, made In R.S.A. No. 2262 of 2005 dated 26.10.2009, the question regarding

adoption among the muslims was considered, in which the Karnataka" High Court held that adoption by a person who is a Muslim, cannot be

pleaded as there is no concept of adoption known to Muslim Law.

9. On the basis of the above legal provisions, we are unable to give any sanctity to the alleged Adoption Deed dated 24.2.2010 which is the basis

of the claim made by the third respondent to claim the right over the detenu. In fine, the Habeas Corpus Petition is allowed with a direction to the

third respondent to hand over the child by name, Giridharan, aged about 4 years, to the petitioner, who is the mother of the detenu. The second

respondent is directed to give police protection to the petitioner and her minor son and the person who is accompanying them, viz. cousin brother

of the petitioner by name Thilesh, till they reach their residence at Villupuram.