

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA

In the matter of an Application for
mandates in the nature of Writs of
Habeas Corpus under and in terms of
Article 141 of the Constitution of Sri
Lanka.

CA Case No: HCA 01/2024

Galabada Liyanage Chameera Indunil
Galabada,
AG/185, Ranpokunugama,
Nittambuwa.

Petitioner

Vs.

1. Mallawaarachchige Don Namalee
Mallawaarachchi,
No. 30, Kiriwandana,
Walawwaththa,
Weweldeniya.
2. Preethi Kumari Sumanarathne,
No. 30, Kiriwandana,
Walawwaththa,
Weweldeniya.
3. Udaya Mallawarachchi,
No. 30, Kiriwandana,
Walawwaththa,
Weweldeniya.

Respondents

Flawya Amelia Galabada,
No. 30, Kiriwandana,
Walawwaththa,
Weweldeniya.

Corpus

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: Ruwantha Cooray with Kesara Hewawissa instructed by Ramzi Bacha Associates for the Petitioner.

Ranil Samarasooriya with Isuru Somadasa instructed by Navoda Wanniarachchi for the 02nd and 03rd Respondents.

Inquiry on: 03.07.2024

Decided On: **25.07.2024**

M.C.B.S. Morais J.

The petitioner has filed an application in terms of Article 141 of the Constitution for a writ of *Habeas Corpus* to,

- b) Produce the Corpus before this court
- c) Permit the petitioner to exercise reasonable access in respect of the minor child Corpus.

Additionally, in his petition the petitioner has prayed for an interim order,

- d) (i) Directing the control Immigration and Emigration to prevent the minor child bearing passport No. PB 4082312.
- (ii) Directing the control Immigration and Emigration to prevent the 01st to 03rd Respondents and/or anyone or more of them from leaving the country along with the above-mentioned minor child.
- (iii) Directing the control Immigration and Emigration to prevent the 01st to 03rd Respondents and/or anyone or more of them from leaving the country;

Until the final hearing and determination of this application;

- (e) Grant an interim order directing the 01st to 03rd Respondents and/or anyone or more of them to produce the minor child before this court.
- (f) Make such other/direction in terms of Article 141 of the Constitution, as Your Lordships' Court shall seem just and equitable;
- (g) Grant costs of this application or in the circumstances of the case, grant the Petitioner exemplary costs at Your Lordships' discretion; and
- (h) Grant such other and further reliefs as Your Lordships' Court shall seem fit.

According to the materials before us, the Petitioner and the 01st Respondent got married in 2007 and the minor was born out of the said marriage on the 23rd of April 2014 in Australia. The petitioner instituted a divorce action against the 01st Respondent in 2018 in the District Court of Attanagalla and he was granted a divorce decree in 2019. The legal and physical custody of the minor was granted to the 01st Respondent subject to the right of the petitioner for reasonable access to the minor.

Based on the materials presented, it is established that the corpus arrived in Sri Lanka on the 6th of April 2024. However, as per the 'PASSENGER INQUIRY' document from the 'Department of Immigration & Emigration Border Control System' and the letter signed by the Deputy Controller (Legal) for Controller General K.M. Subhani M. Chathurangi, it is evident that the corpus departed from the country on the 5th of May 2024. The petitioner filed this petition on the 7th of May 2024, signifying that the departure occurred prior to the initiation of the current legal proceedings. It is also documented that they are presently residing in Australia.

This timeline of events, as substantiated by the immigration records, underscores the transient nature of their stay in Sri Lanka and provides crucial context to the proceedings at hand.

Furthermore, it is established that the legal and physical custody of the corpus was obtained by the 1st Respondent. The 2nd and 3rd Respondents, being merely the maternal grandparents, have no authority or control over the corpus. This distinction is critical, as it highlights the absence of any custodial responsibility on their part.

Initially, the interim order was granted against the 2nd and 3rd Respondents, based on the assertion that the corpus remained within Sri Lankan borders. However, subsequent developments have confirmed that the corpus has indeed departed the country as above

mentioned. This revelation underscores the lack of jurisdictional control and further diminishes any claims against the 2nd and 3rd Respondents.

On perusal that notice on the Respondents were tendered to the court on 14th May 2024 and were returnable on the 22nd of May 2024. This sequence of events raises significant uncertainty regarding whether the 1st Respondent actually received the notice while still within the jurisdiction of Sri Lanka before their subsequent departure from the country. The ambiguity surrounding the receipt of notice by the 1st Respondent prior to leaving Sri Lanka is a critical point that must be taken into account when assessing the procedural integrity and fairness of the proceedings.

In light of these materials, I do not see any reason to issue the interim order prayed for.

In the context of child custody in Sri Lanka, *habeas corpus* can be used to resolve custody disputes when one party alleges that a child is being wrongfully detained by the other party, enabling the court to determine the legality of the detention and to make an appropriate custody decision in the best interests of the child.

There are no materials to substantiate to suggest that the corpus is in illegal custody as in this instance, the District Court of Attanagalla has determined that custody belongs to the mother on the consent of the petitioner and the petitioner was being granted reasonable access and the petitioner also admits in his petition that he consented to take the child to Australia.

In the case of ***Gooneratnayaka Vs. Clayton*** (1929) 31 NLR 132 Fisher CJ. held that;

“The writ of habeas corpus is not known to the Roman-Dutch law. It was extended to Ceylon by the Charter of 1801 and 1833. The basis of the application is that the custody is illegal. If a person, having the capacity to make a choice has done so, the Courts will not interfere.”

In the case of ***Rajeswari Chandrasekar Ganesh Vs. The State of Tamil Nadu*** - Writ Petition (Criminal) No. 402 of 2021 J.B.Pardiwala J. held that;

“The exercise of the extraordinary jurisdiction for issuance of a writ of Habeas Corpus would, therefore, be seen to be dependent on the jurisdictional fact where the applicant establishes a prima facie case that the detention is unlawful.”

Additionally, upon careful consideration it remains unproven that the 1st Respondent, as the mother, fails to serve the child's best interests. Upon perusing the material submitted to us, it is apparent that the 1st Respondent has ensured reasonable access to the corpus.

Therefore, I do not see any reason to issue the writ of *habeas corpus*.

In the case of ***Rajeswari Chandrasekar Ganesh Vs. The State of Tamil Nadu*** - Writ Petition (Criminal) No. 402 of 2021 J.B.Pardiwala J. held that;

“The writ of Habeas Corpus is a prerogative writ and an extraordinary remedy. It is a writ of right and not a writ of course and may be granted only on reasonable ground or probable cause being shown, as held by this Court in Mohd. Ikram Hussain v. State of Uttar Pradesh and others, AIR 1964 SC 1625 and Kanu Sanyal v. District Magistrate, Darjeeling, (1973) 2 SCC 674.”

However, parents must exercise caution and refrain from exposing their children to personal problems. Just as it is our duty to shield them from physical harm, so too must we protect their emotional well-being. Embarrassing children with adult issues can disrupt their development and create undue stress. It is incumbent upon parents to provide a stable and supportive environment, allowing them to thrive without the burden of personal difficulties. In family law, there exists a well-established principle that children should not endure suffering due to conflicts or issues between their parents. This principle is firmly grounded in the doctrine of the best interests of the child, which serves as the paramount consideration in all matters concerning children.

In the case of ***Rajeswari Chandrasekar Ganesh Vs. The State of Tamil Nadu*** - Writ Petition (Criminal) No. 402 of 2021 J.B. Pardiwala J. held that;

“Before we close this matter, we would like to convey to the parties that their two minor children are watching them very closely. Showing the children that their parents can respect each other and resolve the conflict respectfully will give them a good foundation for the conflict that may, God forbid, arise in their own lives. The parties should try to do their best to remain relaxed and focused. It is critical to maintain boundaries between the adult problems and children. It is of utmost interest to protect the innocence of children and allow them to remain children. They must not be burdened by any adult problem. Minor children do

not have the coping skills or the intellectual ability to understand any issues like the financial constraints, adult relationship issues or their parents unhappiness.”

After careful consideration of all materials before us, I find no compelling justification to grant the *habeas corpus* or the interim order.

Accordingly, this application is refused and dismissed.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal