

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

Dated: 6th day of May 2010

Present  
Hon'ble Mr. Justice JAWAD RAHIM

And

Hon'ble Mr. Justice K.GOVINDARAJULU

WRIT PETITION No.79/2010 (HC)

BETWEEN:

Sri.Shivananda Shankarappa Yaligar,  
Age : 49 Years,  
R/at : Yaligar, Menasigi,  
Ron Taluk,  
Gadag District.

...PETITIONER

(By Sri.Hemant R Chandangoudar &  
Sri.B.Ravindradas, Advs.,)

And:

1. The Superintendent of Police,  
Gadag District, Gadag.
2. The Circle Police Inspector,  
Ron Taluk,  
Gadag District.
3. Sri.Ningabasappa,  
S/o : Sri.Mahadevappa Thotar,  
Age : 26 Years,  
R/at : Sakin, Menasigi,  
Ron Taluk,  
Gadag District.



4. Smt.Sharada,  
W/o: Sri.Murigeppa Laxmeshwar,  
Age not known,  
R/at : Saki Naregal,  
Ron Taluk,  
Gadag District.

...RESPONDENTS.

(By Sri.M.B.Vishwanath, AGA )

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Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to direct the respondents No.1 & 2 to produce the petitioner's daughter Kumari Sumithra, aged 16 year 10 months, before this Hon'ble Court. Hand over the custody of petitioner's daughter Kumari Sumithra, aged 16 year 10 months, to the petitioner.

This Writ Petition coming on for preliminary hearing before the Court this day, Jawad Rahim, J Court passed the following: -

**ORDER**

This petition under Article 226 of the Constitution of India seeking issuance of writ in the nature of Habeas Corpus in the matter relating to custody of one Sumithra.

2. The petitioner claiming to be her father, alleges that Sumithra was missing from 8-9-2009 and thereafter he learnt that she was kidnapped by respondents 3 and 4. He



lodged report regarding missing only on 1-4-2010, almost seven months after her disappearance.

3. After registration of the case, it is stated that the 3<sup>rd</sup> respondent as well as the girl appeared before the jurisdictional Magistrate on 17-4-2010. The 4<sup>th</sup> respondent, who is the mother of 3<sup>rd</sup> respondent, appeared along with them and submitted before the Magistrate that Sumithra was married to 3<sup>rd</sup> respondent and as 3<sup>rd</sup> respondent was taken into custody relating to an enquiry against him, she would be willing to take custody of Sumithra and assured her safe keeping. While such request was made, the petitioner also appeared before the Magistrate and sought custody of the girl, as is recorded by the Magistrate in paragraph 2 of his order referred to in this Writ Petition.

4. The girl refused to go along with the petitioner and in her categorical statement disclosed threat to her life by her father the petitioner only. The learned Magistrate recorded her statement and noticing that her interest was paramount, exercised power under Section 98 Cr.P.C to choose the best person for her custody. In that the Magistrate felt that



remanding her to Remand Home was not proper when 4<sup>th</sup> respondent was willing to take care of the girl and accordingly passed on order fixing the date for appearance of the parties on 30-4-2010. Later, the petitioner's wife also filed application before the jurisdictional Magistrate seeking custody of the girl, which came to be rejected on 26-4-2010. None of these orders are questioned either by the petitioner or his wife.

5. As this proceeding is under Article 226 of the Constitution for issuance of writ of Habeas Corpus it must necessarily be indicated that the detention of the girl is illegal. We are satisfied that the Magistrate, in the facts and circumstances has exercised power conferred on him, as reflected in the order dated 17-4-2010, and has passed judicial order handing over custody of Sumithra to 4<sup>th</sup> respondent. He has done so in exercise of the power conferred by Section 98 Cr.P.C and this is a judicial order.

6. Custody of Sumithra with 4<sup>th</sup> respondent being pursuant to the order of the Court, her custody cannot be described as illegal. If the petitioner feels that the order impugned is unsustainable, remedy open to the petitioner is to

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assail the said order and not by the mode of these proceedings under Article 226 of the Constitution.

7. Writ Petition is disposed off with the above observation.

Sd/-  
JUDGE

MP\*

**NOTE:**

"This was the order dictated by me in Open Court on 06.05.2010 on behalf of the Division Bench consisting of myself and late Hon'ble Shri Justice K.Govindarajulu, with which Hon'ble Shri Justice K.Govindarajulu agreed."

Sd/-  
JUDGE

Sd/-  
Chief Justice