

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 16.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.12421 of 2016
and
M.P.Nos. 6411 and 6412 of 2016

V.S.Dhurasami

... Petitioner

-Versus-

1.Punithavathi
2.Minor Harini
3.Minor Karshini

... Respondents

Prayer: This petition is filed under Section 482 Cr.P.C. praying to call for the entire records relating to the case in M.C.No.7 of 2013 on the file of the learned Judicial Magistrate, Kangayam, Tirupur District and to quash the said case.

For Petitioner

: Ms.Karthika

for

Mr.C.Prakasam

ORDER

For the sake of convenience, the parties in this proceedings will be referred to by their respective name.

2. It is the case of Punithavathi that she got married to Dhuraisami on 15.05.2002 and through the wedlock, they have two female children namely, (1) Harini and (2) Karshini and that Dhuraisami has failed and neglected to maintain her and her children. Therefore, Punithavathi has initiated a proceedings under Section 125 of Cr.P.C. in M.C.No.7 of 2013 before the learned Judicial Magistrate, Kangayam against Dhuraisami. Seeking to quash the said proceedings Dhuraisami is now before this court with the present original petition.

3. Ms.Karthika, the learned counsel appearing for Punithavathi submitted that Punithavathi developed illicit intimacy with another person and she eloped with him. Therefore, Dhuraisami filed a petition in H.M.O.P.No.306 of 2013 before the Sub court, Namakkal, for divorce and the same is pending. She further submitted that Dhuraisami filed a petition in I.A.No.80 of 2014 in H.M.O.P.No.306 of 2013 for DNA profiling of Punithavathi and her children in order to show that the children were not born

through him and that the said petition has been dismissed by the learned Subordinate Judge, Namakkal, pursuant to which Dhuraisami has preferred a civil revision petition. Under such circumstances, Ms.Karthika contended that the proceedings before the learned Magistrate is an abuse of process of law and therefore, the same should be quashed.

4. In a proceedings under Section 125 of Cr.P.C. it is indeed very narrow inasmuch as the court would see whether the wife and children have been neglected by husband. Of course, the question of adultery can also be raised as a defence during trial, but the same cannot be canvassed in a petition under Section 482 of Cr.P.C. in the light of the fact that petition for profiling DNA that was filed by Dhuraisami in I.A.No.80 of 2014 in H.M.O.P.No.306 of 2013 has been dismissed by the learned Subordinate Judge, Namakkal. Thus, the criminal original petition deserves only to be dismissed.

5. In the result, the criminal original petition is dismissed. Consequently, connected MPs are closed.

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To

1.The Judicial Magistrate, Kangayam, Tirupur, Tirupur District.

P.N.PRAKASH.J.,

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<http://www.judis.nic.in>