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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CrI.O.P.(MD) No.5884 of 2016

and

CrI.M.P.(MD) No.2907 of 2016

Jaisankar

... Petitioner/Petitioner/Respondent

vs.

1.Maheswari

2.Minor.Anjanesan

(Minor rep.by his

mother R1 herein)

... Respondents/Petitioners/Petitioners

PRAYER: This petition is filed under Section 482 Cr.P.C to set aside the order of the Principal Sessions Judge, Dindigul, passed in Cr.R.P.No.19 of 2015, dated 21.11.2015, confirming the order made in Cr.M.P.No.7003 of 2015, dated 03.09.2015, by the Judicial Magistrate, Palani.

For Petitioner : Mr.D.Venkatesh

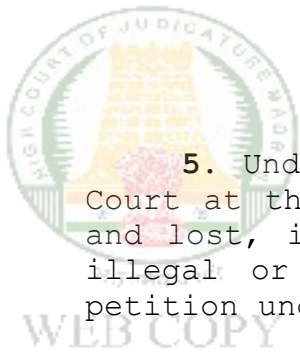
O R D E R

The petitioner has filed this criminal original petition, under Section 482 of the Code of Criminal Procedure, seeking set aside of the order dated 21.11.2015, passed in Cr.R.P.No.19 of 2015 by the learned Principal Sessions Judge, Dindigul, confirming the order, dated 03.09.2015, passed in Cr.M.P.No.7003 of 2015, by the learned Judicial Magistrate, Palani.

2. For the sake of convenience, the parties are referred to by their name in this Order.

3. It is the case of Maheswari that she got married to Jaisankar and they are having a child, by name, Anjanesan, through the wedlock. Maheswari initiated proceedings under the Protection of Women from Domestic Violence Act, 2005 in Cr.M.P.No.2605 of 2014 claiming various reliefs for her and her minor son Anjanesan. Jaisankar entered appearance and contested the proceedings by contending that Anjanesan was not born to Maheswari through him, but through one Sathyamoorthi. Therefore, Maheswari filed a miscellaneous petition, in Cr.M.P.No.7003 of 2015, seeking direction to subject all the parties for D.N.A.profiling. The Trial Court, by order dated 03.09.2015, allowed the petition and directed the parties for D.N.A.Profiling, challenging which, Jaisankar filed a criminal revision petition, in Cr.R.P.No.19 of 2015, before the learned Principal Sessions Judge, Dindigul District, under Sections 399 and 397 Cr.P.C., which was dismissed by the learned Principal Sessions Judge on 21.11.2015, challenging which Jaisankar is before this Court.

<https://hcservices.courts.gov.in/hcservices> 4. The learned counsel appearing for Jaisankar and perused the materials placed in the typed set of papers.



5. Under Section 397(3) Cr.P.C., a second revision before the High Court at the instance of a party, who had approached the Sessions Court and lost, is not maintainable. However, where there has been a patent illegal or impropriety in the orders passed by the Courts below, a petition under Section 482 Cr.P.C., can be maintained.

6. The issue to be decided herein is as to whether the orders passed by the Courts below suffer from any jurisdictional error or impropriety or illegality.

7. The learned counsel appearing for the petitioner submitted that on account of matrimonial dispute between Maheswari and her former husband Sathyamoorthi, H.M.O.P.No.57 of 2004 was filed before the learned Subordinate Judge, Palani, in which Maheswari appears to have filed counter stating that:

"I have not married any person by name Jaishankar and I am not living with him. I am bearing his child is false, frivolous and defamatory, I do not at all know the said Jaishankar."

8. Based on the above averments, it is contended by Jaisankar that the Orders passed by the Courts below require to be set aside.

9. In the considered opinion of this Court, there is no illegality or impropriety in the orders passed by the Courts below and both the Courts below have taken into consideration the facts on record and passed the orders. If really Jaisankar has not fathered the child Anjanesan, he can boldly subject himself to D.N.A.profiling. The fact that he is avoiding the same does give room to suspicion that all is not well. Under such circumstances, this Court is of the opinion that this criminal original petition is devoid of merits and accordingly it is liable to be dismissed.

10. In the result, this criminal original petition is dismissed. Consequently, connected criminal miscellaneous petition is closed.

Sd/

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To:

- 1.The Principal Sessions Judge,Dindigul.
- 2.The Judicial Magistrate,Palani.

Cr1.O.P.(MD) No.5884 of 2016
and
Cr1.M.P.(MD) No.2907 of 2016
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