

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.11079 of 2010

and

M.P.No.1 of 2010

R.Vijayan ... Petitioner

Vs.

1. Nirmala alias Nirmala Rani

2. Minor Angu Sakthi

S/o.Nirmala,

Represented by his mother and
Natural Guardian

Nirmala @ Nirmala Rani,

1st Respondent herein

... Respondents

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records in M.C.No.1 of 2010 on the file of the Judicial Magistrate, Omalur, Salem and quash the same.

For Petitioner : Mr.M.Thamizhavel

For Respondents : No Appearance

O R D E R

This petition is filed by the petitioner under Section 482 of Cr.P.C., to quash the criminal proceedings of the case in M.C.No.1 of 2010, which is pending on the file of the learned Judicial Magistrate, Omalur, Salem.

2. Heard Mr.M.Thamizhavel, learned counsel appearing for the petitioner. No representation for the respondents.

3. 1st respondent claims to be the wife of the petitioner and the 2nd respondent is said to have born to the 1st respondent through the petitioner.

4. The 1st respondent has filed a petition in M.C.No.1 of 2010 on the file of the learned Judicial Magistrate, Omalur,

Salem District under Section 125 of Cr.P.C., as against the petitioner claiming maintenance to the extent of Rs.10,000/- per mensem. In the above said petition, the 1st respondent has stated that she is a widow and that the petitioner had approached her parents and represented that he wanted to marry her as he was in need of a good family wife. He had also assured that he would take care. Believing his representation, the 1st respondent was given in marriage to the petitioner and that their marriage was solemnised on 30.11.2000 at Salem Sithar Koil.

5. She has further stated that after their marriage, they both had been living as husband and wife for about 3 years at Salem Nethimedu and out of their wedlock, the 2nd respondent was born to them. It is alleged that the 2nd respondent being the female child, the petitioner had induced the 1st respondent to kill her; for which, the 1st respondent had refused.

6. It is also alleged that at the time of their marriage, he had told that he had married a lady already by name Gajendra, who gave birth to two children and since she was suffering from elephantiasis, he was not in a position to live with her and hence, he had married the 1st respondent. According to the petitioner, the allegations made in the petition in M.C.No.1 of 2010 were absolutely false and that petition was filed by the 1st respondent only with an intention to grab huge amounts from him.

7. It is the case of the petitioner that he had married his wife Gajendra on 05.09.1985, as per the Hindu rites and customs and during the course of their wedlock she had delivered two children namely, V.Arunprasath (21 years) and V.Bhuvaneswari (18 years) and she has also been working as Block Development Officer at Salem.

8. He would further state that the said Gajendra is his real wife and he had not married any lady except the said Gajendra and now, he is living with his wife Gajendra along with his two children and that there was any sort of family dispute between him and his wife Gajendra.

9. In this connection, Mr.M.Thamizhavel, learned counsel appearing for the petitioner has submitted that only for the purpose of extracting money from the petitioner, the 1st respondent has come forward with the petition in M.C.No.1 of 2010 claiming a sum of Rs.10,000/- towards maintenance for her as well as for the 2nd respondent.

10. On the other hand, learned counsel for the respondent has submitted that having disputed the paternity of the 2nd respondent, the petitioner should have subjected himself for paternity test and that he could not simply ignore the 1st

respondent by saying that he had not married her and that the 2nd respondent was not born to her through him. On perusal of the records, this Court understands that the respondent had already sent a letter dated 24.11.2005 to the Special Cell of the Hon'ble Chief Minister of Tamil Nadu through the District Collector, Salem. Now, the case in M.C.No.1 of 2010, claiming maintenance is pending on the file of the learned Judicial Magistrate, No.I, Omalur, Salem.

11. On a cursory perusal of the affidavit filed in support of the petition and on considering the submissions made on behalf of both sides, this Court finds that the petition in M.C.No.1 of 2010 cannot simply be quashed merely on the basis of the averments of this petition. Because, the birth of the 2nd respondent being a minor female child is in question and disputed by the petitioner.

12. Under this circumstance, the 1st respondent being the petitioner in M.C.No.1 of 2010 is under the necessity and obligation to prove all the allegations which include the paternity of the 2nd minor respondent.

13. Keeping in view of the above facts, this Criminal Original Petition is dismissed with a direction to the learned Judicial Magistrate to dispose the case in M.C.No.1 of 2010 within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

ssn

To

1. The Judicial Magistrate,
Omalur, Salem.
2. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.M.Thamizhavel, Advocate sr 11549

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SP(31/07/2017)