

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.4199 of 2011
and
M.P.No.1 of 2011**

1.A.Geetha

2.Minor Shanbaga Jothi

... Petitioners

vs.

D.Annadurai

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records and set aside the Order made in Crl.R.C.No.37 of 2007, on the file of the Additional District and Sessions Judge (Fast Track Court) Vellore, Vellore District, dated 03.11.2010 and confirming the Order made in M.C.No.12 of 2006 on the file of the Judicial Magistrate, Gudiyattam, Vellore District, dated 12.07.2007.

For Petitioners : Mr.K.A.Ravindran

For Respondent : Mr.R.Margabandhu

The instant original petition is preferred by the Petitioners, who are mother and daughter, as against the order passed in Crl.R.C.No.37 of 2007, on the file of the Additional District and Sessions Judge (Fast Track Court), Vellore, Vellore District, dated 03.11.2010. The said order was passed by reversed the order passed in M.C.No.12 of 2006 on the file of the learned Judicial Magistrate, Gudiyatham, Vellore District dated 12.07.2007.

2.The brief facts of the instant petition is to set aside the order passed in Crl.R.C.No.37 of 2007 on the file of learned Additional District and Session Judge (Fast Track Vellore District). The basis for the case is that the Petitioners are wife and daughter of the Respondent respectively. The 1st Petitioner got married with the Respondent on 27.06.1996 at Anganapalli Village, Gudiyatham Taluk. After sometime of the marriage, a dispute had arisen between the spouses for which, on 18.01.2006 the 1st Petitioner gave a complaint as against the Respondent and on that basis a case was registered as against Respondent herein in Crime No.1 of 2006 on the file of the concerned jurisdictional All Women Police Station.

3.Subsequently, the Respondent herein was arrested by the All Women Police and later, released on bail. Thereafter, the 1st Petitioner lived along with the Respondent for some period which resulted the birth of the 2nd Petitioner herein. However in view of the demand of dowry, the

1st Petitioner was expelled from the matrimonial home which made her to file a petition under Section 125 of Code of Criminal Procedure as against the respondent herein by claiming a sum of Rs.1000/- to each of the petitioner.

4.It is brought to the notice of this Court by the learned counsel for the Petitioner that pending proceedings of the maintenance case, the Respondent herein, filed a Miscellaneous Petition in Cr.M.P.No.4489 of 2007 sought for the direction to undergo DNA test in respect of 2nd Petitioner herein by alleged that she was not born to him. The said application was dismissed by the learned judge on 02.07.2007. Admittedly, as against the order of dismissal no further legal proceeding was taken by the aggrieved. Hence, the said order has attained finality. Further, he submitted that by considering the legal as well as factual aspects, the learned Magistrate allowed the maintenance case by ordering a sum of Rs.1000/- to the 1st Petitioner and Rs.500/- to the 2nd Petitioner respectively.

5.Feeing aggrieved over the order passed in the maintenance case, the Respondent herein filed a Criminal Revision Case in CrI.R.C.No.37 of 2007 on the file of the aforesaid Court. In the aforesaid revision case, the learned judge has reversed the order passed by the learned Judicial Magistrate, Gudiyatham to the extent of directing the Respondent herein

to pay a sum of Rs.1000/- to the 2nd Petitioner herein by holding that the 1st Petitioner herein is not entitled to get any maintenance from the Respondent herein. The reason for the dismissal of the claim of the 1st Petitioner herein was that as the 1st Petitioner herein objected the petition filed by the Petitioner for DNA test before the learned trial Court as she was not ready to go for DNA Test. Moreover, the learned Additional District Judge also hold that without the scientific proof of DNA Test report, it was unsafe to hold that the Respondent herein was the father of the 2nd Petitioner.

6.However, the learned counsel for the Petitioners would further submit that as the Learned Additional Judge failed to take note of the fact that the Respondent herein did not take any legal steps to challenge the order passed in the aforesaid miscellaneous petition filed for the relief of DNA Test. So, it is his submission that the order passed in the Criminal Revision Case was completely against the factual aspects and hence, the order passed therein is liable to be set aside.

7.Per contra, the learned counsel for the Respondent would submit that the order passed in Criminal Revision Case is a well considered order based on the material facts and circumstances. He would further submit that the 2nd petitioner herein failed to afford her to go for DNA Test and the same would create doubt over the paternity of the birth of the 2nd

petitioner. So, the order passed in Criminal Revision Case shall not be liable for any disturbance.

8.I heard Mr.K.A.Ravindran, learned counsel appearing for the petitioners and Mr.R.Margabandhu, learned counsel appearing for the respondent and the materials available on record are perused.

9.The first dispute in the instant case is the parentage and legitimacy of the birth of 2nd Petitioner herein. For which, it is canvassed by the learned counsel for the Petitioners that though the respondent herein had taken out an application for DNA Test before the learned Trial Court, but the same was dismissed. However, the learned counsel for the petitioners also able to justify that as to what prevented the Respondent herein to take up the order of dismissal for further legal action. Since he had not taken any legal steps, the legitimacy and parentage cannot be questioned or disputed by the respondent herein and this contention as per the opinion of this Court is having legal force.

10.However, when the impugned order passed in the case in Crl.R.C.No.37 of 2007 dated 03.11.2010, it is found that the learned Judge has held that after the police complaint and after the arrest of the Revision Petitioner (the Respondent herein) the 1st Respondent (the 1st Petitioner) herein during that period had become pregnant and the said

version was not acceptable. Further he has also held that the Revision Petitioner proved that the 1st Respondent was and is living in adultery with PW-3 namely Govindaraj. In fact the evidence of said Govindaraj was analyzed by the learned Judicial Magistrate in his order passed in M.C.No.12 of 2006, but he has not found any evidence towards the alleged intimacy between the 1st petitioner herein and the said Govindaraj. Moreover, as far as the living in adultery is concerned, the person who alleges the same is liable to prove the said allegation as per law without any probability. But the Respondent herein had not chosen to let in any evidence in respect of the alleged adultery, so the consideration of the learned revision Court as if the revision petitioner proved the adulterous life of the 1st petitioner with the said Govindaraj is an acceptable. Further, the 1st petitioner herein had made statement that the respondent herein has intimacy with a woman whose name is also given before the learned trial Court.

11. Moreover, it is ironical to note here that when the revision Court concluded that the 2nd Petitioner was not born to the Respondent herein, he has directed the Revision petitioner to pay a sum of Rs.1000 to the 2nd Petitioner herein that itself shows that he has not applied his mind with regard to the facts circumstances and evidence available in the case.

12. Therefore, for the above discussion this Court has no hesitation

to set-aside the order passed in CrI.R.C.No.37 of 2007 on the file of Additional District and Session Judge, Vellore and the order passed in M.C.No.12 of 2000 on the file of the Judicial Magistrate Gudiyatham, Vellore District dated 12.07.2007 is confirmed and the instant petition is allowed. However, it is for the petitioners to approach the learned Judicial Magistrate concerned for the enhancement of the maintenance amount as per their living condition by filing appropriate petition. Consequently, connected miscellaneous petition is closed.

05.10.2017

vs

Speaking order

Index : Yes

To

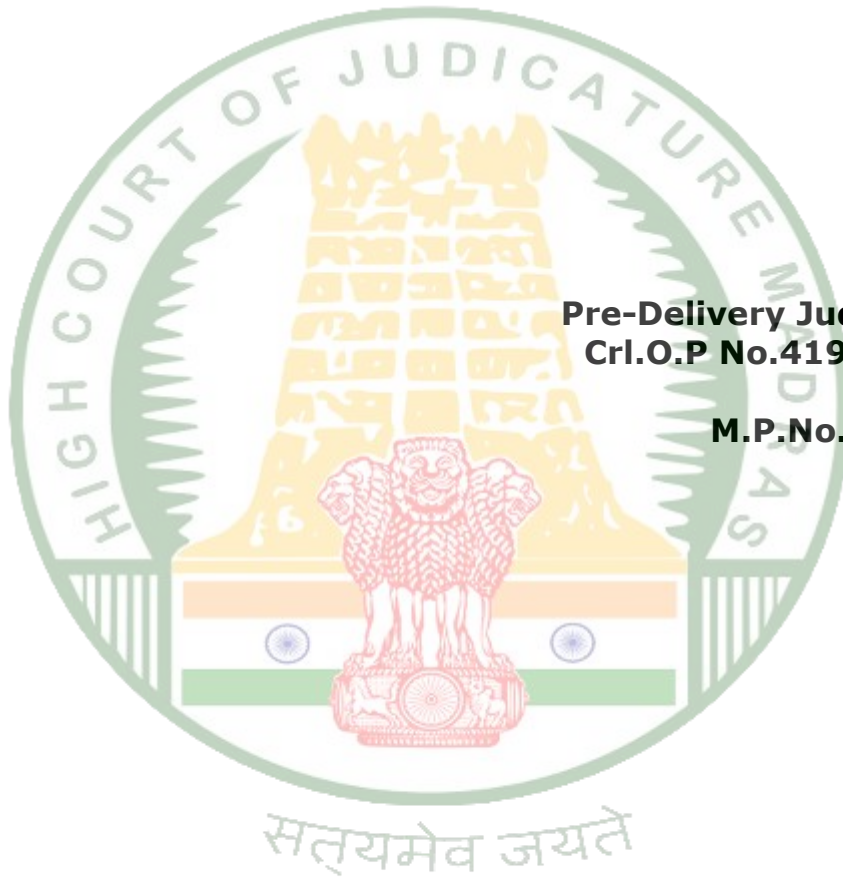
The Judicial Magistrate, Gudiyattam, Vellore District.



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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.4199 of 2011
and
M.P.No.1 of 2011**

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