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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:

Reserved on	Pronounced on
11.04.2017	21.04.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No.480 of 2017

and

Crl.M.P. (MD) Nos.441, 442, 1467, 1786 & 1794 of 2017

Kalaichelvan @ Dhanush K.Raja ... Petitioner/Respondent

-VS-

1. R. Kathiresan

2. K. Meenakshi @ Meenal

... Respondents/Petitioners

Prayer: Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records relating to the proceedings in M.C. No.15 of 2016 on the file of the Judicial Magistrate, Melur and quash the same.

For petitioner : Mr.Ramakrishnan Veera Raghavan
Senior Counsel
For Mr.G.R.Swaminathan

For respondents : Mr.S.Titus

O R D E R

This Criminal Original Petition has been preferred seeking to call for the records relating to the proceedings in M.C. No.15 of 2016 on the file of the Judicial Magistrate Court, Melur (for brevity "the Trial Court") and quash the same.

2. The primary issue in this case relates to the paternity of the Tamil film star Dhanush.

3. For the sake convenience, the parties will be referred to by their name, referring specially to the petitioners before the Trial Court as "Kathiresan couple".

3(a). It is the specific case of the Kathiresan couple that:

a) they hail from Melur Village;

<https://hcservices.hc.courts.gov.in/hcservices/> was born to them on 07.11.1985 who was named Kalaichelvan;



c) Kalaichelvan studied upto VIII standard in R.C. Middle School in Sivagangai Main Road, Melur and thereafter, he studied in Government Boys Higher Secondary School, Melur, upto X standard, which, he completed in March 2002 securing 337 marks;

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d) then, he was admitted to XI standard in Arumugampillai Seethai Ammal Higher Secondary School in Tirupattur, Sivagangai District and he attended classes for a month, after which, he had left for Chennai to join the film industry to become a great actor, director and producer of films, where, he changed his name to Dhanush and got married to Aiswarya, the elder daughter of Rajinikanth, popular cine actor;

e) since Kalaichelvan @ Dhanush had failed and neglected to take care of the Kathiresan couple, later, the said couple issued a legal notice for maintenance on 04.10.2016 to Dhanush, which was returned unserved and hence, on 02.11.2016, the couple filed a petition under Section 125, Cr.P.C., before the Judicial Magistrate, Melur, claiming Rs.65,000/- per month as maintenance, which was taken on file as M.C.No.15 of 2016;

f) simultaneously, the Kathiresan couple also filed an interlocutory application in C.M.P. No.5626 of 2016 in M.C. No.15 of 2016 claiming interim maintenance of Rs.65,000/- per month, advocate fee and other expenses of Rs.1 lakh.

4. On 25.11.2016, the Trial Court ordered notice to Dhanush returnable by 12.01.2017. On coming to know of the proceedings against him from the media, Dhanush engaged an advocate who filed vakalat on 07.12.2016 and obtained copies of the petition in M.C. No.15 of 2016 and C.M.P. No.5626 of 2016, on the strength of which, he has preferred the present quash application before this Court on 11.01.2017.

5. On 12.01.2017, the advocate appeared on behalf of Dhanush before the Trial Court and filed an application seeking exemption of his presence, which was allowed by the Magistrate and the case was adjourned to 03.03.2017.

6. On 25.01.2017, this quash application came up for admission and this Court (*G. Chockalingam, J.*), ordered notice on the Kathiresan couple returnable by 08.02.2017. On 08.02.2017, *Brother Chockalingam, J.*, passed the following order:

"Counter affidavit is filed by the respondents. Both parties are directed to file documents, if any, to prove their case. Post on 09.02.2017 at 2.15 p.m. for final

<https://hcservices.hcscservices.in/>

7. The case docket shows that *Brother Chockalingam, J.*, has



heard this case on several dates and during one such hearing, the learned counsel for the Kathiresan couple produced a document purported to be a certified copy of the Transfer Certificate issued by the Government Boys Higher Secondary School, Melur, relating to their son Kalaichelvan, in which, the following identification marks are recorded:

- 1.: இடது காரை எலும்பின் மெல் ஒரு மச்சம்
(a mole over left collar bone)
- 2.: இடது முடி*கையில் ஒரு தடிம்பஜ்
(a scar in the left elbow)

8. Dhanush was asked to file an affidavit affirming whether or not he has the aforesaid marks, for which, he filed an affidavit executed before a Notary Public on 20.02.2017 denying the same. This affidavit was taken on file by this Court on 22.02.2017 and the case was posted to 24.02.2017, on which date, *Brother Chockalingam, J.* directed Dhanush to be present before this Court on 28.02.2017 for verification of his identification marks.

9. On 28.02.2017, Dhanush appeared before this Court and in the chambers of the Registrar-Judicial, his identification marks were examined by Dr.M.R.Vairamuthu Raju, M.D., Dean, Madurai Medical College, Madurai and Dr. Meenakshi Sundaram, M.D., Vice Principal, Madurai Medical College, Madurai and on the same day, a certificate was submitted by the doctors, which was kept in a sealed cover by the Registrar-Judicial. It is not known as to why *Brother G. Chockalingam, J.* did not peruse the said certificate either on 28.02.2017 or on the subsequent dates.

10. After having submitted the certified copy of the school transfer certificate relating to Kalaichelvan, the Kathiresan couple filed Crl.M.P.(MD) No.1467 of 2017 for a direction to the Head Master, Arumugampillai Seethaiyammal Higher Secondary School, Tirupattur, Sivangangai District for producing the original transfer certificate records of Kalaichelvan, which was allowed by *Brother G. Chockalingam, J.* on 17.02.2017. Pursuant to the order, the original transfer certificate of Kalaichelvan was produced by the Head Master and the same was also perused by Mr.Titus, learned counsel for the respondents and also by this Court. This Court did not find any discrepancy between the certified copy of the transfer certificate and the original. In other words, even in the original transfer certificate, the date of birth of Kalaichelvan is shown as 13.04.1987 as in the certified copy. Similarly, the identification marks of Kalaichelvan in the original is same as that in the certified copy.

11. *Brother G. Chockalingam, J.* posted the case to 02.03.2017. At that juncture, the Kathiresan couple filed Crl.M.P. (MD) No.1794 of 2017 seeking to subject Dhanush for DNA profiling. On



02.03.2017, Brother G. Chockalingam, J. has recorded this fact and has adjourned the case to 09.03.2017 and on change of the three month roster on 06.03.2017, I succeeded the said portfolio.

12. On 09.03.2017, as the case was hogging the social network and media, I held in-camera proceedings for protecting the privacy of both the parties. After hearing both sides, I adjourned the case to 20.03.2017 for further proceedings. On 20.03.2017, I noticed that the sealed cover containing the certificate qua examination of identification marks of Dhanush was not opened and so, I had it brought to my chambers and in the presence of the counsel on either side, opened the sealed cover and furnished them with the copies of the said certificate. The said certificate given by the doctors reads thus:

"I Dr. M.R. Vairamuthu Raju, M.D., Dean, Madurai Medical College and Dr. Meenakshi Sundaram, M.D., Vice Principal, Madurai Medical College, Madurai, both of us visited Registrar Judicial Chamber as per the direction of Crl.O.P. (MD) No.480 of 2017. At that time, Mr.Danush was present in the chamber and he was introduced by the Registrar Judicial to us and requested to examine Mr.Danush with regard to identification marks as per the order dated 28.02.2017.

Our supporting staff Mr. Somu, Office Assistant and Mr. Suresh, Male Nursing Assistant were also present in the Chamber.

We examined Mr. Danush in a separate room in the Registrar Judicial Chamber in the presence of Registrar Judicial and we alone were present in the separate room at 11.20 a.m.

We examined Mr. Danush in day light and with light application and we examined without any eraser and we examined the concern parts with water spirit application and finally come to conclusion that:

1. With regard to first query, there is no mole over the left collar bone and there is no scar in left elbow.

2. With regard to second query, it is possible to remove a small superficial mole completely but a scar cannot be removed by plastic surgery and only

<https://hcservices.ecourts.gov.in/hcservices> reduction can be done.

3. With regard to third query, a very small



superficial mole removed by laser technique without any trace. A removed large mole that traces can be seen by Dermascope but a scar cannot be removed by modern plastic surgery only a scar reduction can be done."

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13. On 11.04.2017, this Court heard the final arguments in the Open Court and reserved orders.

14. While I was plodding through the original records of the Trial Court, I stumbled upon an advocate's notice dated 04.10.2016 issued by the Kathiresan couple to Dhanush, which was not submitted earlier by the counsel for the Kathiresan couple in his typed set of papers. The averments in the said notice did arouse some doubts in my mind about which I shall discuss in detail later.

Summary of submissions on Dhanush's side:

15. On the side of Dhanush, Mr. Ramakrishnan Veera Raghavan, learned Senior Advocate appearing for the counsel-on-record for Dhanush made the following submissions:

a) Even if the entire averments in M.C. No.15 of 2016 on the file of the Trial Court are accepted, they could only prove that the Kathiresan couple had a son by name Kalaichelvan, who left their home sometime in the year 2002 and was not found thereafter. Apart from this, there is no other material to connect their son Kalaichelvan with Dhanush.

b) On the contrary, records submitted on behalf of Dhanush show that a son was born on 28.07.1983 to Krishnamoorthy and Vijayalakshmi at the Women's and Children's Hospital, Chennai, who was named as R.K.Vengadesha Prabhu. Vengadesha Prabhu studied in Thai Sathya Matriculation School, Saligramam, Chennai-93 and completed his X standard in April 1999. His Matriculation examination mark list shows that he had passed out from Thai Sathya Matriculation School, Saligramam, Chennai in I class by securing 688 out of 1100 marks in April 1999. Vengadesha Prabhu changed his name as Dhanush and his first film *Thulluvadho Ilamai* was completed in March 2002 and the Central Board of Film Certification had issued a certification for the said film on 15.03.2002.

c) After the said film became a box office hit, Dhanush formally changed his name to K. Dhanush by issuing a gazette notification in the Tamil Nadu Government gazette dated 17.12.2003. Dhanush got married to Aiswarya, the elder daughter of Rajinikanth, a popular thespian and their marriage function was a public affair, which is also known to the Kathiresan couple, as

could be seen from the averments in their Maintenance Petition. From 2003 to 2016, Dhanush was not in hiding and was under public gaze. Now, suddenly, to say in the year 2016, that Kalaichelvan became Dhanush without anything more is indeed preposterous.

d) It was the Kathiresan couple who gave the certified copy of Transfer Certificate relating to their son Kalaichelvan, wherein, certain identification marks were found and on the directions of this Court, Dhanush voluntarily submitted himself for examination by doctors and the examination certificate given by the doctors clearly establishes that Dhanush does not have the identification marks which find place in the Transfer Certificate relied on by the Kathiresan couple. Even after this exercise, further continuation of the proceedings before the Trial Court would surely be an abuse of process of law.

e) The question of subjecting Dhanush for DNA profiling as requested now by the Kathiresan couple cannot be countenanced in the absence of *prima facie* materials to show that Dhanush is the biological son of them. In support of this contention, he placed reliance on the following rulings:

**a) Bhabani Prasad Jena vs. Orissa State
Commission for Women [(2010) 8 SCC 633]:**

"23. In *Sharda* while concluding that a matrimonial court has power to order a person to undergo a medical test, it was reiterated that the court should exercise such a power if the applicant has a strong *prima facie* case and there is sufficient material before the court. Obviously, therefore, any order for DNA test can be given by the court only if a strong *prima facie* case is made out for such a course." (emphasis supplied)

**b) Dipanwita Roy vs. Ronobroto Roy
[(2015) 1 SCC 365]:**

"14 It is therefore apparent that despite the consequences of a DNA test, this Court has concluded, that it was permissible for a court to permit the holding of a DNA test, if it was eminently needed after balancing the interests of the parties" (emphasis supplied)

f) The Judicial Magistrate, Melur, lacks territorial jurisdiction to entertain a petition under Section 125, Cr.P.C. in the light of Section 126(1)(a), Cr.P.C. To fortify his contention, the learned Senior Counsel appearing for Dhanush



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placed reliance upon the judgment of the Supreme Court in **Vijay Kumar Prasad vs. State of Bihar and others [(2004) 5 SCC 196]**:

"13 It is to be noted that clauses (b) and (c) of sub-section (1) of Section 126 relate to the wife and the children under Section 125 of the Code. The benefit given to the wife and the children to initiate proceeding at the place where they reside is not given to the parents. A bare reading of the section makes it clear that the parents cannot be placed on the same pedestal as that of the wife or the children for the purpose of Section 126 of the Code."

g) In one breath, the Kathiresan couple say that Kalaichelvan was born on 07.11.1985, but, the Transfer Certificate produced by them shows that his date of birth as 13.04.1987. In the teeth of such apparent and glaring conflict even in the documents filed by the Kathiresan couple, it is obvious that they have not made out even *prima facie* case for the trial to proceed.

Submissions on the side of the Kathiresan couple:

16. Mr. Titus, learned counsel for the Kathiresan couple made the following submissions:

a) Disputed facts cannot be gone into in a petition under Section 482, Cr.P.C. and it should be best left for the Trial Court to decide, after appreciation of evidence adduced by either side.

b) The Magistrate has no power to conduct any preliminary enquiry in a proceeding under Section 125, Cr.P.C. and he should proceed with the trial directing the parties to adduce evidence in support of their assertions and this Court should not interfere in the legitimate proceedings that has been launched by the Kathiresan couple claiming maintenance under Section 125, Cr.P.C. To garner strength for this contention, the learned counsel for the Kathiresan couple placed strong reliance upon the judgment of the Supreme Court in **Nand Lal Misra vs. Kanhaiya Lal Misra [AIR 1960 SC 882]**.

c) This Court should not accept the certificate submitted by doctors qua examination of identification marks of Dhanush, as there is every possibility of the identification marks being erased between the time when the Transfer Certificate was produced before this Court and the appearance of Dhanush for examination. In support of this contention, the learned counsel for the Kathiresan couple placed strong reliance upon the following passages from the book titled **The Essentials of Forensic Medicine and Toxicology**, 29th Edition, 2010, authored by Dr. K.S. Narayan



Reddy:

"Erasure:

The scar can be erased by excision and skin grafting, or suture of the edges of the excised area. This results in a scar which is less clearly seen.

Erasure:

(1) Surgical Methods:

- (a) Complete excision and skin grafting
- (b) production of burn by means of red hot iron
- (c) scarification
- (d) carbon-di-oxide snow

(2) Electrolysis

(3) Caustic substances remove pigment by producing inflammatory reaction and a superficial scar, e.g., mixture of papain in glycerine, zinc chloride and tannic acid

(4) Laser Beam: By exposure to laser beams, the particles of the dye get vaporised and expelled from the tissues in gaseous form

(5) Confluent smallpox and sometimes chronic eczema in children can obliterate tattoo marks."

d) Without subjecting the doctors to cross-examination, this Court should not accept the certificate given by doctors qua examination of identification marks of Dhanush.

e) The DNA profiling alone can conclusively decide the issue and therefore, this Court should either order DNA profiling or relegate the case for the Trial Court to decide the issue.

f) R.K. Vengadesha Prabhu is not Dhanush, because, in the gazette notification dated 17.12.2003, the father's name of R.K. Vengadesha Prabhu has been given as "Kasthuri Raja", whereas, the Birth Certificate and Transfer Certificate of R.K. Vengadesha Prabhu show his father's name as Krishnamoorthy.

g) The contention of Dhanush that his father's original name was Krishnamoorthy and he being in the film industry, changed his name to Kasthuri Raja cannot be true, because, the name change was effected only in the year 2015. In other words, in the gazette notification dated 17.12.2003, R.K. Vengadesha Prabhu, S/o



Kasthuri Raja is changed to K.Dhanush, whereas, Krishnamoorthy became Kasthuri Raja only in the year 2015 as could be seen from the gazette notification dated 18.02.2015.

h) The Transfer Certificate relating to R.K. Vengadesha Prabhu shows his community as "Scheduled Caste". This cannot be true had he been the son of Kasthuri Raja and Vijayalakshmi, because, both of them belong to *Kaattu Nayakar* community. In this regard, the Kathiresan couple has filed Crl.M.P. (MD) No.1786 of 2017 in the present Criminal O.P. seeking a direction to the Tahsildar of Bodi Taluk, Theni District, for a direction to issue community certificate to Kasthuri Raja and his wife Vijayalakshmi. If the said Crl.M.P. is allowed and if their communities are determined, then, it will be clear that they are not Dalits and the Transfer Certificate showing R.K. Vengadesha Prabhu as "Scheduled Caste" will stand belied.

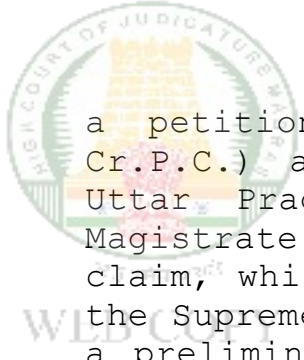
i) Coming to the contention on Dhanush's side about the discrepancy in the date of birth certificate of Kalaichelvan, viz., 07.11.1985 given in the hospital records and 13.04.1987 given in the school Transfer Certificate of Kalaichelvan, Mr.Titus submitted that the birth certificate of Kalaichelvan showing his date of birth as 07.11.1985 is the true record. At the time of admission of Kalaichelvan in the school, his grand parents have wrongly given the date of birth as 13.04.1987.

j) That the Kathiresan couple do not have the wherewithal to fight the case in the Family Court, Chennai, as they are ordinary residents of Melur. Hence, the contention put forth on the side of Dhanush that the Trial Court lacks territorial jurisdiction to hear the case, should not be accepted. In support of this contention, the learned counsel for the Kathiresan couple placed reliance upon the following judgments:

- a Shabana Bano vs. Imran Khan
[AIR 2010 SC 305]
- b Devaki vs. Chandrika and another
[AIR 1998 Kerala 190]
- c Ganga Sharan Varshney vs. Shakuntala Devi
and another [1990 Crl.L.J. 128]

17. This Court gave its anxious consideration to the rival submissions and perused the materials available on record.

18. At this juncture, it may be necessary to advert to the law laid down by the Supreme Court in **Nand Lal Misra** (supra), upon which reliance was placed by Mr. Titus, learned counsel for the Kathiresan couple. In that case, Nand Lal, a minor, filed



a petition under Section 488, Cr.P.C. (present Section 125, Cr.P.C.) against the respondent, viz., the Advocate General of Uttar Pradesh claiming him to be his putative father. The Magistrate conducted a preliminary enquiry and dismissed the claim, which was confirmed by the High Court and in that context, the Supreme Court held that the Magistrate has no power to conduct a preliminary enquiry in a proceeding under Section 488, Cr.P.C. (present Section 125, Cr.P.C.). However, in the same judgment, in paragraph no.7, the Supreme Court held as follows:

"7. . . . In the context of the first submission, the second submission could only mean that the Magistrate could satisfy himself before issuing notice, whether the application was ex facie not maintainable or frivolous."

19. From the above, it is clear that though the Magistrate cannot conduct preliminary enquiry, yet, he should have found out if the claimant had made out a *prima facie* case for proceeding further. To appreciate this aspect, it may be apposite to simply extract the relevant paragraphs from petition in M.C.No.15 of 2016 filed by the Kathiresan couple:

"2. The respondent was born on 07.11.1985 at Rajaji Government Hospital, Madurai. The petitioners admitted the respondent for his studies upto 8th standard at R.C. Middle School, Sivagangai Main Road, Melur. After completing 8th standard, the petitioners admitted the respondent in 9th standard in Boys Government Higher Secondary School, Melur. Thereafter, the respondent studied upto X standard in the very same school. The respondent passed X standard in March 2002 with 337 marks. The respondent's X standard certificate was registered in the office of the Assistant Director of Employment Exchange, Madurai on 17.06.2002. Thereafter, the respondent was admitted for XI standard in Arumugam Pillai Seethaiammal Higher Secondary School, Tirupattur, Sivagangai District. The respondent attended the classes in XI standard for about 1 month and due to his awareness for acting, went to Chennai and joined in film chambers and the respondent became a great actor and director and producer of films.

3. The respondent's name is Kalaichelvan and later when he joined in film, he altered his name to Dhanush K.Raja. The respondent married elder daughter of Mr.Rajinikanth and fully settled in Chennai and he is earning more than Rs.100 crores per year.



4. The 1st petitioner was working as Conductor in Thirumoorthy Private Bus Company for about 15 years and with all income, educated the respondent and his younger daughter and later daughter was married to one Subramanian. Later, the 1st petitioner became a debtor and now without jobs, living at the mercy of others. The 2nd petitioner is working as housemaid and with that meagre income, the petitioners are running their days. Now the 1st petitioner is not having any job and do not have any income. The petitioners are living in poverty.

5 The 1st petitioner is affected with Tuberculosis and the 2nd petitioner is affected with Arthritis and other chronic diseases.

6 The petitioners are not able to maintain themselves, since, they are affected with many diseases, nobody is here to attend on them."

In support of M.C. No.15 of 2016, the following documents were marked:

SCHEDULE OF DOCUMENTS:

- 1 Respondent's 10th standard Hall Ticket for Public Exam
- 2 Xerox copy of 10th standard mark sheet
- 3 Employment Exchange Registration card
- 4 Copy of unclaimed Legal Notice with postal acknowledgment
- 5 Copy of suit notice with postal receipt
- 6 Permanent residential certificate and copy of Family Card issued by VAO

20. When this Court posed a pointed question to Mr.Titus, that there is a big gap from the year 2002 to 2016 inasmuch as there is no material to show what steps the Kathiresan couple had taken to trace their son, Mr.Titus took this Court through the counter affidavit dated 07.02.2015 filed by the Kathiresan couple before this Court, wherein, at paragraph no.17, it is stated as follows:



respondents educated and cared the petitioner till 10th standard and joined him for 11th standard in Arumugampillai Seethaiyammal Higher Secondary School, Thirupattur, Sivagangai District and joined him in the Government Hostel. After going one month for class, he went to Chennai and joined the cine field."

21. From the above assertion made by the Kathiresan couple, it is clear that, Kalaichelvan was studying in a Government hostel from where he is said to have gone missing. If a boy goes missing from a Government Hostel, there would have been an FIR of boy-missing, even if the parents had failed to inform the police. Mr. Titus, learned counsel, submitted that the parents of Kalaichelvan are poor villagers and they were simply searching around the world for their son. But, even according to them, Kathiresan was working as a Bus Conductor in Thirumoothy Private Bus Company for about 15 years, which means that he is a person who knows to issue tickets, collect fare from the passengers and tender them change, maintain trip sheet, etc. and submit daily collections to the bus company and he is not from a remote hill area tribal settlement, but, very much a man working in a bus company in the plains.

22. Mr. Titus, learned counsel for the Kathiresan couple invited the attention of this Court to the hand written note that is said to have been left by Kalaichelvan addressed to his parents at the time of his going away from home, wherein, he has exhorted his parents not to search for him. To recapitulate, this hand written note was submitted by the Kathiresan couple themselves to this Court and the said note reads as under:

“க.கலைச் செல்வன் எழுதுவது

எனது தெய்வங்களான எனது அம்மா. அப்பா தங்கைக்கு நான் சென்று விட்டேன் என்று வருந்த வேண்டாம் என்னை தேட வேண்டாம் நாம் வணங்கும் விஸ் ணு வும், லக்ஷ்மி அன்னையும் எனது அம்மா அப்பாவுக்கு தங்கைக்கு உதவுவார்கள் என்ற நம்பிக்கையில் நான் செல்கிறேன். என்னை தேட வேண்டாம்.

என்னால் தான் என் பெற்றோருக்கு அதிக மனக்கஸ்டம் அதிக துன்பங்கள் ஏற்பட்டன.

என் பெற்றோர் எனது மனவியாதியை போக்க என்னை 20 கோயிலுக்கு அழைத்து சென்றனர். ஆனால். என் மனவியாதி போகவில்லை. நான் எங்கையாவது வேலை பார்ப்பேன். குறிப்பிட்ட காலத்திற்குள் வீடு திரும்புவேன். அம்மா அப்பா தயவு செய்து என்னை தேட வேண்டாம். என்னை நினைத்து வருந்த வேண்டாம்

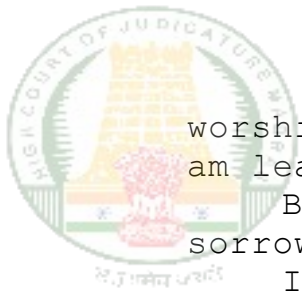
இப்படிக்கு.

க.கலைச் செல்வன் ”

[Free English translation of the whole note]

“K.Kalaichelvan writes

<https://hcservices.ecourts.gov.in/hcservices/> Gods, namely, my mother, father and sister, do not worry about my separation. Do not search for me. With the hope that Vishnu, Goddess Lakshmi, whom I



worship as Gods would help my mother, father, sister, I am leaving. Do not search for me.

Because of me, my parents got heartache and full of sorrows.

In order to cure my mental ailment, my parents took me to 20 Temples. But, my mental ailment did not get cured. I will somewhere work. Return home within a specified period. Mother and Father, please do not search for me. Do not feel distressed thinking about me.

By

K.Kalaichelvan"

Besides the above, in the left margin of the note, it is vertically written as follows:

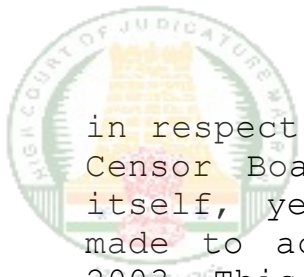
“தயவு செய்து என்னை தேட வேண்டாம்.”

(please do not search for me)

The last paragraph of the note clearly states that Kalaichelvan was suffering from mental illness, for which, he was taken to about 20 temples by his parents and on account of that, he was leaving his home. He has not stated that he is leaving his house because of his abiding interest in silver screen.

23. It is not the case of the Kathiresan couple that at a very young age, their child went missing or it was kidnapped and later, the child metamorphosed into Dhanush. It is their specific case that after completing his X standard and while he was pursuing his XI standard, Kalaichelvan left the house sometime in 2002. The Kathiresan couple was also aware of Dhanush's marriage with Aiswarya, D/o Rajinikanth. Therefore, Dhanush was in full public view and was not in hiding from 2002 onwards. His maiden film *Thulluvadho Ilamai* appears to have been cleared by the Central Board of Film Certification as early as 15.03.2002, whereas, the employment registration certificate of Kalaichelvan with the Employment Exchange that has been filed along with M.C. No.15 of 2016 shows that it was registered on 17.06.2002, which means that in June 2002, Kalaichelvan was unemployed. Whereas, Dhanush's film *Thulluvadho Ilamai* has been cleared by the Central Board of Film Certification on 15.03.2002 itself, which means that he must have been engaged in the film industry prior to the issuance of the certificate of the Central Board of Film Certification.

24. Mr. Titus submitted that the certificate given to *Thulluvadho Ilamai* in the year 2002 should not be accepted, because, the said movie was re-done and released in the year 2003 and in the re-done version, Kalaichelvan was roped in to act. He submitted that even in Ground-e, it is stated that Dhanush's maiden film was *Thulluvadho Ilamai*, and was released in 2003 and therefore, this probablises his contention that the film certification given in the year 2002 for *Thulluvadho Ilamai* is not



in respect of the film. Though film certification was given by the Censor Board for the film *Thulluvadho Ilamai* in the year 2002 itself, yet after the certification was given, Kalaichelvan was made to act as Dhanush and the movie was released in the year 2003. This argument sounds indeed fabulous and specious.

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25. In **State of Orissa vs. Debendra Nath Pati [2004 AIR SCW 6813]**, the Hon'ble Supreme Court has held that the High Court in exercise of its powers [Article 227](#) of the Constitution of India and u/s.482 [Cr.P.C.](#), can look into documents, which are unimpeachable and of sterling quality. In the considered opinion of this Court, the original Censor Board certificate given for *Thulluvadho Ilamai*, the original of which was submitted to this Court is a document of unimpeachable and sterling quality. To say that, after the Censor Board had issued the certificate, the lead Actor in the film was changed and Kalaichelvan was made to adorn the role by changing his name as Dhaunush and thereafter, the movie was released in the year 2003 is too large a pill for any prudent man to swallow. Even giving the benefit of this doubt to the Kathiresan couple, where were they when Dhanush married Aiswarya, D/o Rajinikanth in the year 2004?. It is not their pleading that they had received some money from Dhanush to keep silent and that they remained silent for his welfare and now that they have become penurious, they are seeking maintenance from him. Had they pleaded so, then, this Court could relegate the matter to the Trial Court for a decision. Unfortunately, the Kathiresan couple has levelled a very uncharitable allegation against Dhanush in their affidavit dated 07.02.2017 filed before this Court which reads as under:

"7. I most respectfully submit that in grounds "E" of the petition, the petitioner claim that he is a reputed film actor. The petitioner is not a reputed film actor, he is reputed son of these respondents.

8. I most respectfully submit that the petitioner acted in films as a drunkard, rowdy and many other unlikable characters."

26. When an actor consistently adorns the role of a villain in reel life, one cannot conclude that in real life also, he would be of the same character. We all know of late M.N. Nambiar, who had, all through his career in the silver screen, acted as a villain, was a very devout and noble soul in his real life. The above averments in the affidavit of the Kathiresan couple do make this Court doubt that, had Dhanush been their real son, would they have made such uncharitable allegations against him.

<https://hcservices.courts.gov.in/hcservices/> In regards the frugal pleadings in the maintenance petition, Mr.Titus, learned counsel for the Kathiresan couple,



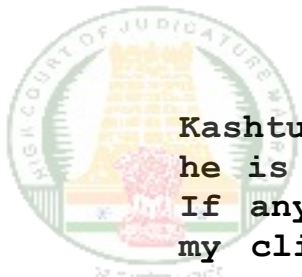
submitted that the said petition was filed on the premise that Dhanush would not dispute his paternity and after his counter, the Kathiresan couple could still adduce evidence in support of their claim.

28. To say that, after Dhanush files his counter, the Kathiresan couple can modify their pleadings sounds like a kite flying venture. Now that Dhanush has filed the present Criminal Original Petition and has repudiated the relationship with the Kathiresan couple and *Brother G.Chockalingam, J.* had permitted the Kathiresan couple to produce all their documents, yet, no material worth its salt, has been produced to advance their case. On the contrary, the Transfer Certificate issued by the Government Boys Higher Secondary School, Melur, with its inherent defects in the date of birth (13.04.1987), *vis-a-vis*, the hospital record which shows Kalaichelvan's date of birth as 07.11.1985 and the alleged note left by Kalaichelvan before leaving his house, have only further dented the case of the Kathiresan couple.

29. This Court is conscious of the settled legal position that the Court, under Section 482, Cr.P.C., should not embark upon to decide disputed questions of fact. Without even embarking upon that, if the pleadings in the Maintenance Petition, the accompanying documents and the further documents that were submitted by the Kathiresan couple during the course of hearing of this case are tested on the anvil of prudence, it can be held that no *prima facie* case has been made out for awarding maintenance even in the event of Dhanush remaining *ex parte* before the Magistrate. Thus, the averments in the Maintenance Petition and the materials produced by the Kathiresan couple, *proprio vigore* do not make out a case for the trial to proceed further. As pointed out by the learned Senior Counsel appearing for Dhanush, DNA profiling cannot be ordered by the Court on the mere asking of a party in the absence of foundational facts. Though DNA profiling is the best form of deciding the paternity, the same cannot be routinely ordered on fanciful pleadings. All the materials produced by the Kathiresan couple may unflinchingly show that the said couple had a son by name Kalaichelvan and that he went missing sometime in 2002-2003. But, the important link that the said Kalaichelvan had metamorphosed into Dhanush is miserably missing in this case for this Court to order DNA profiling.

30. Now, let me deal with a very disturbing feature in this case, *i.e.*, the allegation made by the Kathiresan couple against Kasthuri Raja. In this regard, paragraph nos.2 and 3 of the advocate's notice dated 04.10.2016 issued by the Kathiresan couple to Dhanush, are profitably extracted as under:

<https://hcservices.ecourts.gov.in/hcse/> **Now you are pretending yourself and you are under the custody of Kasthuriraja, Film Director and**



Kashturiraja is getting money out of your income and now he is trying to murder my clients, who are your parents. If any bodily injury or any kind of accidents affecting my client's life is taken place, it will be by you and your caretaker Kasthuriraja. Who will be liable for all consequences. You are under the custody of Kasthuriraja and he is not permitting you to meet your parents. Kasthuriraja is pretending as your father and engulfing all your monies. You are put in a position that you cannot come out of the custody of Film Mafia Kasthuriraja.

3. I call upon you to send the maintenance amount to my clients to their address and inform me authentically. Failing which take notice that I have instructed to file maintenance case against you under Section 125 of Cr.P.C. and also you will be prosecuted for neglecting parents under relevant provisions of law and also you are instructed to send Rs.25,000/- for this notice charges and charges for filing case against you for maintenance under the relevant provisions of law. You are bound to pay arrears of maintenance for previous one year, it will come to Rs.7,85,000/- and from today Rs.65,000/- per month for your parents maintenance. This is for your strict notice."

The aforesaid notice has been addressed as follows:

**"Mr. Kalaichelvan @ Dhanush K. Raja (Film Actor)
S/o R. Kathiresan and Meenakshi @ Meenal
16/5, Rajamannar Salai
Thiagarayar Nagar
Chennai 600 017"**

The envelope containing the notice has returned un-served to the advocate who has sent it and he has filed the envelope as a document in M.C. No.15 of 2016. A copy of this notice was not filed in any of the typed set of papers filed before this Court by the Kathiresan couple. This Court noticed this document while perusing the original records that were summoned from the Trial Court. Obviously, this notice was not received by Dhanush and therefore, his side cannot be blamed for not enclosing the same. Had the Kathiresan couple wanted Dhanush to really receive this notice, there would have been no necessity for them to have stated his name as Kalaichelvan @ Dhanush, S/o R. Kathiresan and Meenakshi @ Meenal. This is evidently a red herring deliberately given to ensure that the notice is returned without service or inter-alia, if it is received by Dhanush, then it will be easy to allege that by receiving the notice, Dhanush has accepted that he is Kalaichelvan, S/o. Kathiresan. Of course, how such a silly inference can be drawn is another question. Every public personality, including Judges get numerous letters, which are



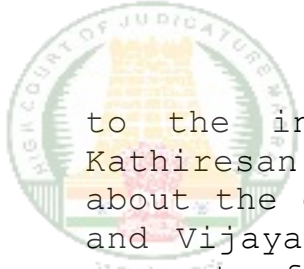
received by their staff routinely. To say that having received the letter and not responded to it, one has accepted the contents as true, would be ridiculous. In fact, for initiating a proceeding under Section 125, Cr.P.C., sending a notice is not at all a *sine qua non*. Further, a copy of this notice has been marked to the following authorities:

1. The Commissioner of Police, Madurai City
2. The Inspector General of Police, South Zone, Madurai
3. The Director General of Police, Chennai
4. The Home Secretary to Tamil Nadu, Chennai.

It is not known as to why these authorities were informed or what is the idea behind marking copies of the notice to them. A very serious allegation that Kasthuri Raja attempted to murder the Kathiresan couple has been made in the advocate's notice dated 04.10.2016. But, in the pleadings, the same is absent. Is it that, prior to the issuance of the advocate's notice dated 04.10.2016, the Kathiresan couple took steps to establish their contact with Dhanush for proving their relationship and is it that in the course of their attempt, Kasthuri Raja attempted to murder them? If that is so, then, the details of the same would have been mentioned in the Maintenance Petition. What is the need to say that Dhanush is in the custody of film mafia Kasthuri Raja? During the course of arguments, Mr. Titus submitted that Dhanush has not signed the Vakalat and affidavits that have been filed before this Court and that someone on his behalf is litigating. Therefore, this Court asked Mr. Titus whether the actual Dhanush appeared or his dupe appeared before *Brother Chockalingam, J.*, on 28.02.2017, for which, Mr. Titus conceded that the person, who appeared was Dhanush and not his dupe. Now, to still allege that Dhanush is in the dark about this litigation sounds Gilbertian.

31. That apart, at paragraph no.3 of the notice dated 04.10.2016, the advocate has demanded Rs.25,000/- for issuance of the same and has also stated that Dhanush is liable to pay Rs.7,85,000/- at the rate of Rs.65,000/- per month for previous one year. How can an advocate pass a decree is yet another question, for which, there is no answer. Only in the final order, the Magistrate would say that maintenance should be paid from the date of filing of the petition. Law has not empowered Advocates to pass decrees of maintenance. The blackmailing tenor of the notice coupled with the concerted attempts of the Kathiresan couple to malign Dhanush and Kasthuri Raja, instead of producing credible materials to show the link between Kalaichelvan and Dhanush, are powerful factors that cannot be ignored by this Court.

32. Coming to the submission of Mr. Titus that R.K. Vengadesha
<https://hccs.judicis.gov.in/hccs-services/> Dhanush, because of the discrepancy in the gazette notifications dated 17.12.2003 and 18.02.2015, this Court is of the view that even if this argument is accepted, that cannot lead



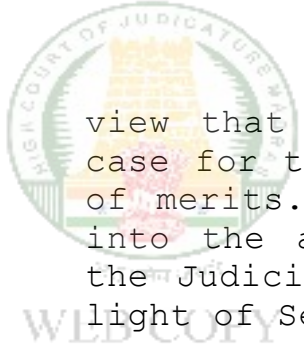
to the inference that Dhanush is the biological son of the Kathiresan couple. The Kathiresan couple seems to be knowing more about the community details and other particulars of Kasthuri Raja and Vijayalakshmi as could be seen from their affidavit filed in support of CrI.M.P. (MD) No.1786 of 2017. It is not known as to who is providing them with information such as this. But, the Kathiresan couple has not produced any shred of evidence to link Kalaichelvan with Dhanush. The prayer in Cr.M.P. (MD) No.1786 of 2017 is indeed very strange. The prayer presupposes that Kasthuri Raja and Vijayalakshmi are natives of Sankarapuram Village and Mallingapuram Village respectively of Bodi Taluk, Theni District, as asserted by the couple in the affidavit filed in support of the prayer. With such a presupposition, the Kathiresan couple is seeking a direction to the Tahsildar to issue community certificate to Kasthuriraja and Vijayalakshmi. Such a prayer cannot be maintained even in a writ petition, because, one cannot seek a direction to the Revenue authorities to issue community certificate to another.

33. Supposing "X" is in need of a community certificate, it is for "X" to make an application seeking the community certificate and if "X" does not get the community certificate even after filing an application in this regard, he can file a writ petition seeking a mandamus to the authorities concerned directing them to issue the community certificate to him. But, it does not lie in the mouth of "Y" to say that the Revenue authorities should issue a community certificate to "X". Hence, CrI.M.P.(MD) No.1786 of 2017 is misconceived and the same is accordingly dismissed.

34. Coming to the submission of Mr.Titus that the doctors, who examined Dhanush have to be cross-examined in the light of the passages quoted from medical treatise extracted above, this Court is of the view that the identification marks of Dhanush were checked by doctors on the orders of this Court only for this Court to be satisfied as to whether there are *prima facie* materials in the assertion of the Kathiresan couple and nothing beyond that can be inferred from the examination conducted by Doctors on Dhanush.

35. As regards the prayer in CrI.M.P.(MD)No.1794 of 2017 filed by the Kathiresan couple seeking DNA profiling of Dhanush, this Court is bound by the Supreme Court judgments referred to above, wherein, the Supreme Court has held in unequivocal language that the person who wants DNA examination to be done, should make out a *prima facie* case for the Court to exercise its power. In the absence of making out a *prima facie* case from their own pleadings and documents submitted before the Trial Court as well as this Court, the prayer of the Kathiresan couple for DNA profiling cannot be entertained. Accordingly, CrI.M.P. (MD) No.1794 of 2017

36. In the light of the above findings, this Court is of the



view that the Kathiresan couple has not made out a *prima facie* case for trial and their petition in M.C. No.15 of 2016 is devoid of merits. In view of this finding, it is not necessary to go into the aspect of availability of territorial jurisdiction for the Judicial Magistrate, Melur, to entertain the petition in the light of Section 126(1)(a), Cr.P.C.

In fine, the proceedings in M.C. No.15 of 2016 on the file of the Judicial Magistrate Court, Melur, is quashed and Crl.O.P.(MD) No.480 of 2017 is allowed. Connected Crl.M.P.(MD) Nos.441, 442 & 1467 of 2017 are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To
The Judicial Magistrate, Melur

Copy to:
The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai

For taking action:

- 1) to send the original records in M.C.No.15 of 2016 to the Judicial Magistrate, Melur forthwith by Special Messenger;
- 2) to return the original records received from the Head Master, Arumugampillai Seethaiyammal Higher Secondary School, Tirupattur, Sivangangai District.

+1 cc to MR.G.R.SWAMINATHAN, Advocate SR.No.53405
+2 cc to MR.S.TITUS, Advocate SR.No.53531

Crl.O.P. (MD) No.480 of 2017
21.04.2017

SMA/KM/21.04.2017:19P/6C