

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on :10.04.2018
Orders Pronounced on:13.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.479 of 2018
and
Crl.M.P.No.5731 of 2018

Anaiyappan

...Petitioner

Vs.

1.Selvi

2.Aruna

...Respondents

PRAYER: Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records in connection with the C.M.P.No.1664 of 2016 in M.C.No.19 of 2015 pending on the file of the learned Judicial Magistrate No.II, Attur, Salem District and set aside the order dated 29.06.2017.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.L.Muthusamy

O R D E R

This criminal revision is filed by the petitioner-husband in C.M.P.No.1664 of 2016 in M.C.No.19 of 2015.

2. The first respondent Selvi, who said to be the wife of the petitioner herein and the second respondent is the daughter born out of the wedlock between the petitioner and the respondent filed in M.C.No.19 of 2015 on the file of the learned Judicial Magistrate No.II, Attur, Salem District, claiming maintenance for the wife and the daughter.

3. Pending trial, the husband filed in C.M.P.No.1664 of 2016 for a D.N.A test alleging that, in the counter affidavit filed in the maintenance case, he has denied the paternity to the second respondent herein and the same was dismissed, hence this revision.

4. The learned counsel for the petitioner has submitted that the marriage between the petitioner herein and the respondent was solemnized on 9.9.1992. However, due to misunderstanding, they are living separately now and the respondent-wife filed in M.C.No.19 of 2015 claiming maintenance wherein, he has filed counter denying his paternity and sought for the DNA test to show that, he has not the biological father of the second respondent herein.

5. The learned counsel for the respondent has submitted that earlier, the husband has filed in H.M.O.P.No.11 of 1993 before the Ariyalur Sub-Court for restitution of conjugal rights and the same was dismissed as withdrawn. Thereafter, he filed in H.M.O.P.No.61 of 1993 for divorce in which, at the time, the first respondent-wife was five month pregnant and said fact has been recorded therein and after dismissal of the H.M.O.P, he also preferred in A.S.No.8 of 1999, this also dismissed and therefore, in view of the conclusion of the civil proceedings, the present application for the DNA test to prove the paternity and also to show that, whether the petitioner is a biological father or not? is totally unnecessary he has intended only to drag on the proceedings.

6. Heard both sides and perused the records.

7. Though, the respondent-wife has taken the plea that in earlier civil suit, the finding has been rendered in their favour, for the reasons best known, those documents were not produced before the learned Judicial Magistrate No.II, Attur, Salem District.

8. The learned counsel for the respondent has drawn my attention to the finding in H.M.O.P.No.11 of 1993 by way of typed set wherein, it is stated that invoking the presumption under section 114 of Evidence Act, a finding has been rendered.

9. Be that as it may, the DNA test is more scientific method which is widely accepted to be more accurate in tune of 99.99% and here in this case, it is a specific case of the petitioner-husband that he has not the biological father and even in the civil proceedings the similar stand was taken by the husband.

10. It appears that within a short span of time, after marriage, they have separated and hence, without going to the other aspects as contended by the learned counsel, taking note of the specific denial of paternity by the petitioner-husband and also the accuracy of the scientific of DNA, I am of the considered view that the DNA test on the both husband and wife and daughter could be resolve the dispute in a permanent manner and hence, this criminal revision petition is allowed and the order in C.M.P.No.1664 of 2016 passed by the learned Judicial Magistrate No.II, Attur dated 29.06.2017 is hereby set aside and all are permitted to undergo the DNA test at the cost of the petitioner-husband and same to be completed within a period of eight weeks from the date of receipt of a copy of this order and also taking note of the pendency of the M.C ., I hereby directed to the learned Judicial Magistrate No.II, Attur, Salem District to complete the case within a period of eight weeks from the date of receipt of a copy of DNA report.

11. With these observations, this petition is disposed of. Consequently connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nvi
To

The Judicial Magistrate No.II,
Attur, Salem District.

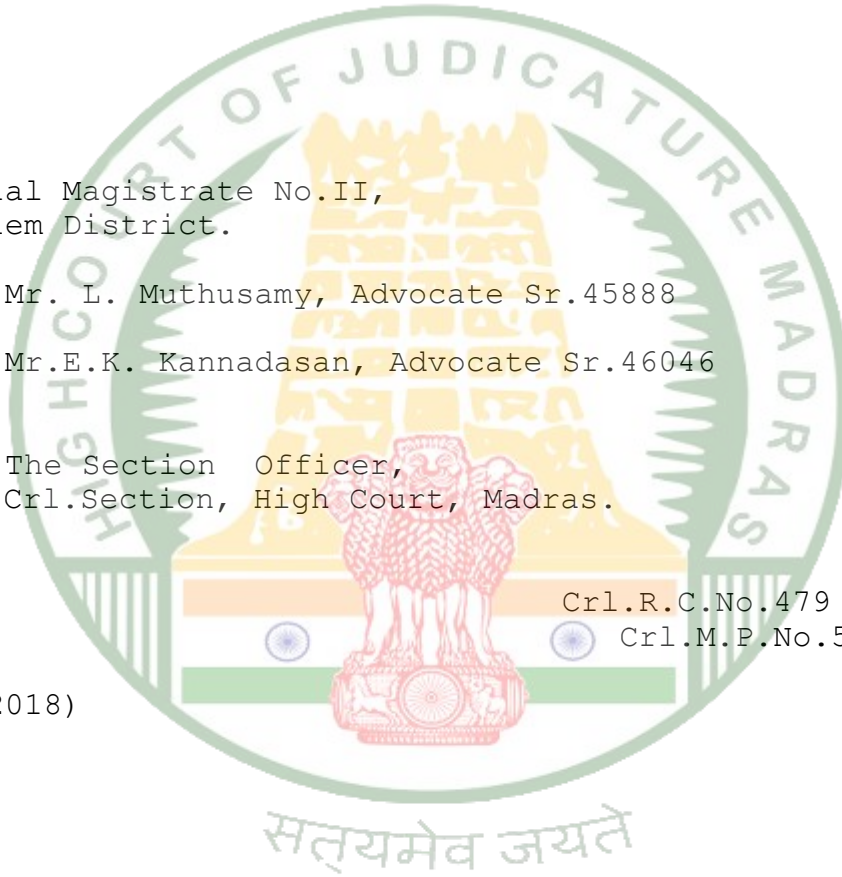
+ 1 cc to Mr. L. Muthusamy, Advocate Sr.45888

+ 1 cc to Mr.E.K. Kannadasan, Advocate Sr.46046

Copy to: The Section Officer,
Crl.Section, High Court, Madras.

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(CCC)
EU(16/07/2018)



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