



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.4397 of 2014

and

M.P. (MD) No.1 of 2014

WEB COPY

The Commissioner,
Nagercoil Municipality
Nagercoil,
Kanyakumari District.

..Petitioner

Vs.

S.Pichi

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in pursuant to the order made in Crl.R.C.No.09 of 2012 dated 16.12.2013 on the file of the Sessions Court, Kanyakumari confirming the order made in Crl.M.P.No.941 of 2011 dated 21.07.2011 on the file of the Judicial Magistrate No.2, Nagercoil and set aside the same.

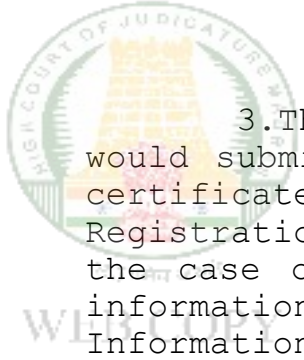
For Petitioner : Mr.P.Athimoolapandian

For Respondent : No Appearance

ORDER

This petition is directed as against the order passed in Crl.R.C.No.09 of 2012 dated 16.12.2013 on the file of the Sessions Court, Kanyakumari District, Nagercoil, thereby confirming the order passed in Crl.M.P.No.941 of 2011 dated 21.07.2011 on the file of the Judicial Magistrate No.2, Nagercoil, thereby directed the petitioner to register the date of birth of her son as 23.07.1989.

2.The case of the respondent is that she filed a petition for direction under Section 13(3) of the Birth and Registration Act, 1969, directing the petitioner to register the date of birth of her son as 23.07.1989, born to the petitioner and her husband Soosai Michael Peter. Notice was ordered to the respondent and the respondent objected to register the date of birth of the petitioner's son as 23.07.1989. After examining P.Ws.1 and 2 and marked Exs.P1 to 5, the learned Judicial Magistrate directed the respondent to register the petitioner's son's date of birth as 23.07.1989 in the birth register. As against which, the petitioner in this case filed revision case in Crl.R.C.No.9 of 2012 before the District and Sessions Court, Kanyakumari District. The said revision also dismissed by confirming the order passed by the Judicial Magistrate. As against, which, the present criminal original petition has been filed.



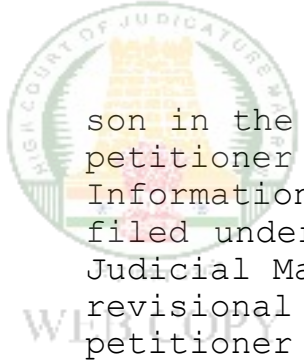
3. The learned counsel appearing for the petitioner/respondent would submit that the respondent failed to obtain non availability certificate from the petitioner under Form 10 of the Birth and Registration Act, 1969. Failure of enclosing Form 10 is fatal to the case of the respondent. Further, he would submit that the information obtained by the respondent under the Right to Information Act is not having any legal entity under Section 13(3) of Birth and Registration Act. Form 10 is mandatory under the Act and it requires some documents enabling the Municipality to verify and avoid the double entries in the birth and death register. Further, he would contend that the Courts below failed to see that as per the guidelines under the Registration Manual issued by the Registrar General (Registration Department) and the circular issued by the Registrar General India dated 05.06.2013, enclosures of Form 10 is very much essential for issuing of non availability certificate. In fact, the respondent herein obtained information from the Right to Information Act and filed the petition under Section 13(3) of Birth and Registration Act, 1969. Therefore, he prayed to set aside the orders passed by the Courts below.

4. Though notice has been served to the respondent, no one is appeared on behalf of the respondent herein.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

6. The circular dated 31.01.2007 mandates that under the provision of Section 17 of the Birth and Registration Act, 1969 and corresponding the rule 13(3) framed therein, the non availability of certificate in Form No.10 is required to be issued when any particular event of birth or death is not found registered. It is also mandatory. Further, the Office of the Registrar General of India issued a circular dated 05.06.2013 stating that in order to put a procedure in place on issuance of Non Availability Certificate, that office has issued necessary directions to all Chief Registrars of birth and deaths vide their office circular No.1/10/2004-VS-(CRS) dated 31.01.2007. Therefore, the circular and the register manual issued by the Registrar General (Registration Department) and the hand book of Registration of Birth and Death mandate that Form 10 to be annexed with the petition filed under Rule 13(3) of Birth and Registration Act. So that the officials can avoid double entries in the birth and death registers.

7. It is seen from the petition filed by the respondent in C.M.P.No.941 of 2011 that the petitioner did not obtain Form 10 viz., the Non Availability Certificate from the concerned municipality viz., the petitioner herein. The petitioner also filed objections and soundly objected for the non enclosure of the Non Availability Certificate of Form 10, which is fatal to the petition and without Form 10, direction cannot be granted. Even then, the learned Judicial Magistrate mechanically recorded the evidence and directed the petitioner to register the birth of the petitioner's



son in the birth register as 23.07.1989. Further, it seems that the petitioner filed with the information obtained under the Right to Information Act. When the Act and Rules mandate that the petition filed under Rule 13(3) has to be annexed with Form 10, the learned Judicial Magistrate ought not to have entertained the petition. The revisional Court also rejected the contention contended by the petitioner herein though the respondent did not appear before the revisional Court.

8. In view of the discussion, the impugned direction is not sustainable under the provisions of birth and registration Act, 1969. Such as, the order passed by the Courts below are liable to be set aside.

9. Accordingly, this criminal original petition is allowed and the order made in CrI.R.C.No.09 of 2012 dated 16.12.2013 on the file of the Sessions Court, Kanyakumari confirming the order made in CrI.M.P.No.941 of 2011 dated 21.07.2011 on the file of the Judicial Magistrate No.2, Nagercoil are set aside. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The District and Sessions Judge,
Kanyakumari District.

2. The Judicial Magistrate No.2,
Nagercoil.

CrI.O.P. (MD) .No.4397 of 2014
and

M.P. (MD) No.1 of 2014
19.09.2018

Arul

ES/SV/SAR 1/14.11.2018/3P/3C