



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
Crl.O.P (MD)No.15721 of 2017

Shanthi

: Petitioner

Vs.

1.The Superintendent of Police,
Ramanthapuram District,
Ramanathapuram.

2.The Inspector of Police,
Sikkal Police Station,
Ramanathapuram District.

:Respondents

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., to direct the 2nd respondent to issue a not-traceable certificate in Cr.No.11 of 2015 on the file of the 2nd respondent.

For Petitioner : Mr.K.Kumaravel

For Respondent : Ms.S.Bharathi,

Government Advocate (Crl.Side)

O R D E R

This petition has been filed for a direction to the respondent Police to issue non traceable certificate.

2.It is the case of the petitioner that her husband is missing from the year 2011 onwards and a complaint was also given by the respondent Police in the year 2015 and the same was registered by the respondent Police on 20.12.2015 in CC No.11 of 2015 as "man-missing" case. Till date, the respondent Police are not able to trace the petitioner's husband. The petitioner wants to get family pension and the employer is insisting for the production of a non traceable certificate in order to grant pension in favour of the petitioner.

3.This Court in CrlOP(MD)No.19255 of 2016 by order dated 18.09.2018 reiterated the procedure to be followed in all man-missing cases. The Police can never issue a certificate as sought by the employer. The Police has to necessarily follow the guidelines given to them insofar as the present case is concerned.

4.Even if the petitioner proceeds on the basis that her husband is not traceable and therefore, he must be presumed to have died, the petitioner has to fulfill the requirements of Section 108 of the Evidence Act.



5.It is strange the employers are seeking for not traceable certificate of a person by treating human beings like documents.

6.The Hon'ble Supreme Court in the judgment in LIC of India Vs Anuradha, reported in 2004 10 SCC 131 has held that the the time or the date of disappearance of a person is a matter of evidence and not a presumption and the person who claims such right must establish the same. In the present case, it is the case of the petitioner that the husband is missing from the year 2011 and therefore, it is for the petitioner to workout her remedy in the manner known to law in order to invoke the presumption under Section 108 by getting appropriate declaration before the Court. Such declaration cannot be given by the respondent Police by issuing non traceable certificate.

7.No employer should give any direction to any one to get non traceable certificate for the purpose of granting pension. Only a valid decree passed by a civil Court can result in the law recognizing the fact that the person who is missing for more than seven years is presumed to have died.

8.In view of the above direction, the prayer sought for by the petitioner cannot be granted by this Court and accordingly, the criminal original petition is dismissed.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-II)

dsk

To

1. The Superintendent of Police,
Ramanthapuram District,
Ramanathapuram.
2. The Inspector of Police,
Sikkal Police Station,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.KUMARAVEL, ADVOCATE IN SR No. 87219

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