



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2018

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMARCr1.O.P. (MD) No.8018 of 2018

WEB COPY

1. Saravanan
2. Santhi
3. Minor Ananthan @ Tamilmani
4. Minor Anbumani
5. Minor Sinthamani

... Petitioners

-Vs-

1. Selvamani
2. Kamala Devi
3. Gopala Krishnan
4. Venkatachalam
5. Janakiraman
6. Periyakaruppan @ Narayanan
7. Ramamani

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 Cr.P.C., to direct the learned Judicial Magistrate, Karaikudi to number the un-numbered Maintenance case in Cr.M.P.SR.No.6596 of 2017, dated 14.02.2018, within the time stipulated by this Court.

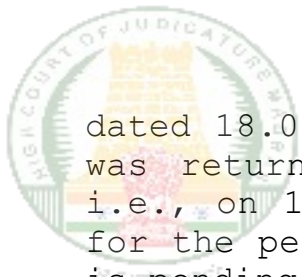
For Petitioners : Mr.R.M.Arun Swaminathan

ORDER

This Criminal Original Petition is filed for issuing a direction to learned Judicial Magistrate, Karaikudi to number the un-numbered Maintenance case in Cr.M.P.SR.No.6596 of 2017, dated 14.02.2018, within a stipulated time.

2. According to the petitioners, they have filed an application for maintenance under Section 125(i) Cr.P.C., r/w. Section 35 of HIV and AIDS (Prevention and Control), Act, 2017, before the learned Judicial Magistrate, Karaikudi and the same was returned on various dates pointing out some defects in the application and lastly, the said petition has been returned on 14.02.2018, stating that the said petition is not maintainable under Section 125(i) Cr.P.C., Challenging the said order, the petitioners have filed present Criminal Original Petition for the above said prayer.

<https://hcservices.ecourts.gov.in/hcservices/> 3. As per the direction of this Court dated 16.05.2018, the learned Judicial Magistrate, Karaikudi, has submitted a report



dated 18.06.2018, before this Court stating that the said petition was returned as defective and not maintainable on the same day i.e., on 14.02.2018 and the same has been received by the counsel for the petitioners. Therefore, as on today, there is no petition is pending before the said Court.

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4. The learned counsel appearing for the petitioners relying upon Section 35 of The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (Special Procedure) submitted that the said petition is maintainable. Section 35, of the said "Act" (Special Procedure) reads as follows:

"35. In any maintenance application filed by or on behalf of a protected person under any law for the time being in force, the court shall consider the application for interim maintenance and, in passing any order or maintenance, shall take into account the medical expense and other HIV-related costs that may be incurred by the applicant."

5. Without considering the said Section, the court below has returned the said petition questioning the maintainability of the application. The petitioner shall explain the defects pointed out by the Court below and re-submit the same, within a period of two weeks from the date of receipt of a copy of this order. In the event of re-presentation, the Court below shall consider the same and pass orders on merits and in accordance with law, within a period of three weeks, thereafter.

6. With the above direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1 The Judicial Magistrate, Karaikudi.

2 The Additional Public prosecutor,

Madurai Bench of Madras High Court, Madurai.

COPY TO: The Record Keeper, ER Section, (for return of papers)

Madurai Bench of Madras High Court, Madurai.

+1CC TO Mr.R.M.Arun Swaminathan, Advocate, Sr No.68828

Crl.O.P.(MD) No.8018 of 2018

19.06.2018