

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.708 of 2018

K.Velmurugan

... Petitioner

Vs.

1. V.Manjula

2. Minor Vijaykanna
S/o. Velmurugan

3. Minor V.Nandhini
D/o. Velmurugan

(Nos.2 & 3 minors rep. by
their mother and guardian
the first respondent)

... Respondents

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to allow the Criminal Revision Case and set aside the order dated 25.04.2018 made in C.M.P.No.207 of 2018 in F.C.M.C.No.65 of 2017 on the file of the Family Court, Vellore, Vellore District.

For Petitioner : Mr.T.Dhanyakumar

For Respondents : Mr.Arun Anbumani

सत्यमेव जयते
O R D E R

The Criminal Revision Case has been filed to set aside the order made in C.M.P.No.207 of 2018 in F.C.M.C.No.65 of 2017 dated 25.04.2018 passed by the Family Court, Vellore District.

2. The petitioner and the first respondent are husband and wife. The second respondent and third respondent are the minor son and minor daughter. The revision petitioner has filed a petition under section 7 (1) (3) of Family Court Act 1984 r/w. 112 of I.E.Act, 1872 for D.N.A. test to prove his paternity in C.M.P.No.207 of 2018 in F.C.M.C.No.65 of 2017 before the learned Judge, Family Court, Vellore. After enquiry, the learned Judge

had dismissed the petition. As against the order of the Family Court, the present criminal revision has been filed before this Court.

3. The learned counsel for the petitioner would submit that the marriage was solemnized between the revision petitioner and the first respondent on 24.05.1999. The third respondent was born on 03.02.2003. The first respondent left from the matrimonial home and she is living with her elder brother. Thereafter, the petitioner filed a petition to prove his paternity. He further submitted that just 10 days before filing of petition for DNA test, he filed a petition for divorce.

4. The learned counsel for the respondents submitted that the respondent has filed a petition for interim maintenance. At the time, the revision petitioner has filed a petition for DNA test to prove his paternity. It is only for the purpose of drag on the proceedings. Hence the learned Judge has rightly dismissed the petition seeking DNA test, which does not call for any interference.

5. Considering the facts and circumstances of the case and on a reading of the materials, the respondent/wife filed a case under Section 125 (2) of Cr.P.C for interim maintenance before the learned Judge, Family Court, Vellore. From 1999 to till 2017, the revision petitioner has not filed any petition either for separation or restitution of conjugal rights or for divorce. However, the revision petitioner has filed a petition for divorce, just 10 days before filing of petition for DNA test, and he took all the allegations against the respondent in that petition. The revision petitioner filed a petition for divorce, 10 days before filing of petition for DNA test, with a view to drag on the proceedings and defeat the respondents without paying the maintenance. Since case filed under Section 125 Cr.P.C is summary in nature if he desire he can file the petition for DNA test in the matrimonial petition for divorce. Hence, this Court does not find any reason to interfere with the order passed by the Family Court, Vellore District.

In the result, the Criminal Revision is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

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Sub Assistant Registrar

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To

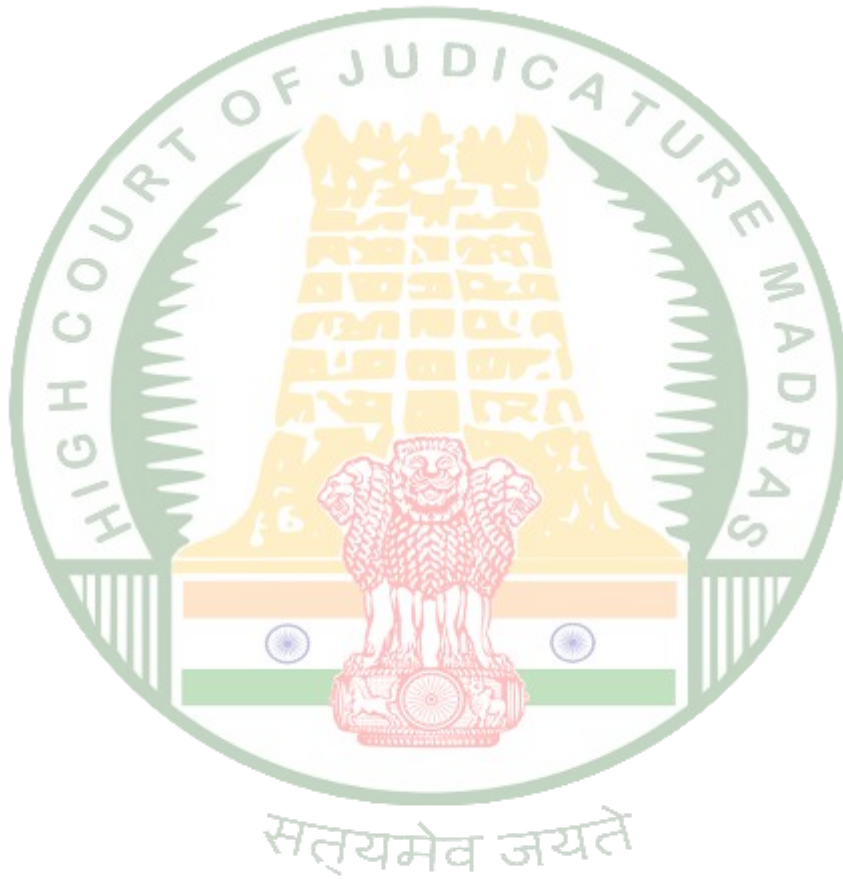
The Family Court,
Vellore, Vellore District.

+1 cc to Mr.Arun Anbumani, Advocate Sr.No.18095

+1 cc to Mr.T.Dhanyakumar, Advocate Sr.No.18451

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CSL/04.04.2019



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