

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.222 of 2016
and
CrI.M.P.No.102 of 2016

K.Sivakumar
S/o.Kulasekaran

...Petitioner

Vs.

1.Jayalakshmi

2.Minor Harshini

Represented by her mother Jayalakshmi

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the Judgment dated 31.08.2015 made in CrI.R.C.No.2 of 2015 pending on the file of the learned Mahila Sessions Judge, (Fast Track) Udhagamandalam and to set aside the same.

For Petitioner : No Appearance
For Respondents : Mr.Jayasri Baskar
for Mr.K.V.Sridharan

O R D E R

The petition has been filed to call for records in judgment dated 31.08.2015 made in CrI.R.C.No.2 of 2015 confirming the order of the Judicial Magistrate, Uthagamandalam in C.M.P.No.3176 of 2014 dated 10.02.2015.

2. Learned counsel for the 1st respondent had filed a petition to conduct DNA test to ascertain the paternity of the 2nd respondent. This situation arose, since the petitioner herein disputed the paternity of the 2nd respondent. Earlier to it, the petitioner who is an Ex-Army man, on the ground of cruelty and desertion, filed a divorce petition in O.P.No.62 of 2003 which came to be dismissed by the Subordinate Judge of Nilgiris, Udhagamandalam against which, he filed CMA.No.9 of 2005 before the District Judge, Udhagamandalam, which was also dismissed.

During these proceedings, he had not questioned the paternity of the minor child. Further, the 1st respondent had filed a maintenance case before the Judicial Magistrate, Udhagamandalam in M.C.No.3 of 2011.

3. The evidence on the side of the respondents had been completed. The petitioner had examined himself as respondent in the maintenance case. During his cross-examination conducted on 21.05.2013, 11.06.2013 and finally on 30.09.2013, he denied the paternity of the child which necessitated the mother of the child herein to file a petition in Crl.M.P.No.3176 of 2014 in M.C.No.4 of 2015 before the Judicial Magistrate, Udhagamandalam, for paternity test and the same was allowed on 10.02.2015 against which, the petitioner filed a revision before the Mahalir Nethi Mandram, Udhagamandalam, in Crl.R.C.No.2 of 2015 and the same was dismissed confirming the order of the trial Court against which, the present petition has been filed.

3. No representation for the petitioner. The learned counsel for the respondents submitted that the petitioner being an Ex-army man was initially paying maintenance while he was in service on the representation made by the respondents to the authorities. After he was discharged from army, from August 2010, he failed to pay the maintenance. The divorce petition filed by him was dismissed and the Civil Miscellaneous Appeal was also dismissed. The 1st respondent having no other alternative for subsistence and survival, filed a maintenance petition in M.C.No.3 of 2011 before the Judicial Magistrate, Udhagamandalam. The petitioner had been protracting and prolonging the trial by giving one reason or the other and finally, by filing this petition, he has kept the maintenance case pending from the year 2011, added to it, he has failed to make payment of maintenance.

3. Considering the submissions and finding that this petition is nothing but a second revision filed as a dilatory tactics to protract the trial and prolong the case of the respondents, further the minor child is 17 years of age and she has been denied proper care and education due to non payment of maintenance, hence this petition is dismissed. The trial Court is directed to conclude the DNA formalities and receive the report from the concerned forensic authorities, within a period of two months from the date of receipt of this order. The forensic authorities shall submit the report as expeditiously as possible. On receipt of DNA report, the trial to be completed

within a period of one month and entire proceedings to be completed within a period of three months. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bri

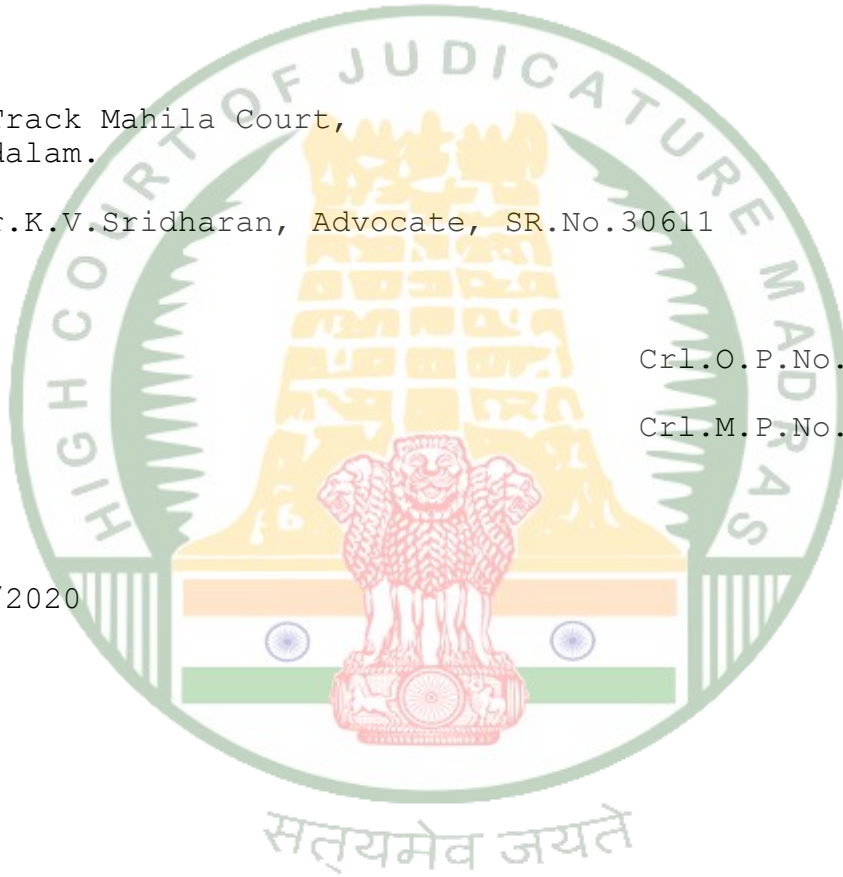
To

The Fast Track Mahila Court,
Uthagamandalam.

+1cc to Mr.K.V.Sridharan, Advocate, SR.No.30611

CrI.O.P.No.222 of 2016
and
CrI.M.P.No.102 of 2016

RJI (CO)
KKV/25/09/2020



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