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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.2594 of 2019

And

Crl.M.P.No.1675 of 2019

R.Mohanasundaram

... Petitioner/Respondent

Vs.

1.Minor.Varshini

2.Minor.Jayaramakrishnan

Both Minors represented by

Next Friend/ Mother Anitha

... Respondents/Petitioners

Prayer:Petition filed under Section 482 of Cr.P.C., seeking to call for the records in M.C.No.45 of 2018 on the file of the Family Court, Salem - quash the same.

For Petitioner : M/s.Zeenath Begum

For Respondents : Mr.R.Ezhilarasan

O R D E R

This petition has been filed seeking to call for the records in M.C.No.45 of 2018 on the file of the Family Court, Salem and to quash the same.

2.The facts of the case is that the respondents represented by their mother filed petition in F.C.O.P.No.2 of 2013 before the learned Judicial Magistrate No.1, Salem, under Section 125 (1) (a) of Cr.P.C. seeking a sum of Rs.20,000/- per month as maintenance and the same was transferred to the file of the Family Court, Salem and re-numbered as M.C.No.45 of 2018. It is claimed that the mother of the respondents and the petitioner were living as husband and wife and the first respondent was born to them on 11.10.2006 and the second respondent was born to them on 07.05.2012 and that the petitioner as a father is duty bound to take care of his children. Challenging the maintenance case, this petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the mother of the respondents has already married one Saravanan on 16.10.1998 and she filed F.C.O.P.No.170 of 2010 before the Family Court, Salem seeking divorce and in the said petition, she has stated that out of the wedlock, three children were born to them, namely, Kishore Kumar, Kaviya Priya and



Varshini and the said petition was decreed in favour of the mother of the respondents on 10.02.2012 and the marriage solemnized inbetween the said Saravanan and the mother of the respondents was dissolved on the ground of cruelty and the said Varshini is the first respondent herein.

4.The learned counsel appearing for the petitioner further submitted that both the respondents were born out of the wedlock of the first marriage and they were not born to the petitioner and hence, the petitioner is not the biological father of the respondents and further submitted that the mother of the respondents obtained two birth certificates for the respondents one mentioning the father's name as Saravanan and the other mentioning the father's name as the petitioner's name and hence that document is not sufficient to prove that the petitioner is the biological father of the respondents.

5.The learned counsel appearing for the respondents submitted that since the petitioner claims that he is not the biological father of the respondents, this Court may issue direction for conducting DNA Test for the petitioner and the respondents and further submitted that the respondents are ready to subject themselves for DNA Test and further submitted that subject to the outcome of the DNA Test, the Trial Court may decide the issue.

6.The petitioner claim that one Saravanan is the biological father of the respondents, whereas, the respondents claim that the petitioner is their biological father. In view of the disputed question of fact, this Court, is not inclined to interfere with the maintenance case. Hence, this Court, without express any opinion on the merits of the case, in the interest of the petitioner and the respondents, grants liberty to the petitioner as well as the respondents to file appropriate petition for conducting DNA Test for the petitioner as well as the respondents to find out the biological status of the respondents and also grants liberty to the petitioner as well as the respondents to work out their remedy in the manner known to law, before the Trial Court.

7.This criminal original petition is dismissed. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar



To

1.The Family Judge
Salem.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1 CC to M/s. Zeenath Begum, Advocate sr 45683.

+1 CC to Mr.R.Ezhilarasan, Advocate sr 45664.

Cr1.O.P.No.2594 of 2019
And
Cr1.M.P.No.1675 of 2019

PVS (CO)
SP(22/10/2021)