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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.17523 OF 2019

AND

CRL.M.P.NO.8837 OF 2019

AND

W.P.NO.19562 OF 2019

CRL.OP.NO.17523 OF 2019:

1. A.Santhosh Kumar
2. V.Latha

... Petitioners/
Accused No.1 & 2

.Vs.

1. The Inspector of Police,
All Women Police Station,
Sooramangalam, Salem District.
Crime No.13 of 2019.

2. R.Gowri Shankar

3. G.Vasuki

... Respondents/Complainant/
Defacto Complainant

PRAYER:-

This Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in relating to the FIR in Crime No.13 of 2019 on the file of the first respondent Police station and quash the same.

For Petitioners : Mr.T.Mohan
For Mr.Mutharasu.G.

For Respondents : Mr.A.Gopinath for R1
Government Advocate (Crl side)



W.P.NO.19562 OF 2019:

A.Santhosh Kumar

... Petitioner

.Vs.

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1. The Social Defense Commissioner,
No.300, Purasaivakkam Highway,
Kellis, Chennai - 10.
2. The District child Protection Officer,
District Child Protection Unit,
418, Collectrate Campus, Salem.
3. The Probation Officer,
District Child Protection Unit,
418, Collectrate Campus, Salem.
4. The Chairperson and Members,
Child Welfare Committee,
DONBOSCO Anbu Illam Campus,
Mullivadi Gate, Salem.
5. The State Rep. by the Inspector of Police,
Karumalaikoodal Police Station,
Salem District.
6. The Inspector of Police,
All Women Police Station,
Sooramangalam, Salem District.
7. R.Gowri Shankar
8. G.Vasuki

... Respondents

PRAYER:-

This Writ Petition has been filed under Article 226 of Constitution of India to issue a writ of mandamus directing the respondents 1 to 6 not to insist the petitioner to produce the child namely Mahanyyashree to the respondents 1 to 6 till the disposal of the suit in OS.No.297 of 2018 on the file of the Sub-court, Mettur.

For Petitioners : Mr.T.Mohan
For Mr.Mutharasu.G.

For Respondents : Mr.A.Gopinath for R1-R6
Government Advocate (Crl. side)



COMMON ORDER

W.P.No.19562 of 2018 has been filed to issue a writ of mandamus directing the respondents 1 to 6 not to insist the petitioner to produce the child adopted by him till the disposal of the suit in OS.No.297 of 2018.

2. CrI.OP.No.17523 of 2019 has been filed by the petitioner invoking Section 482 of Cr.P.C. to quash the FIR filed against him in Cr.No.13 of 2019 on the file of the first respondent police station.

3. Since the issue involved in both the matters and the facts are one and the same. Both the petitions are disposed of by way of common order. The parties are referred to as per their rank in the writ petition.

4. The facts in brief are as follows:

According to the petitioner, he and his wife are a child less couple. Despite a medical treatment, they could not have a biological child of their own. They decided to adopt a child and accordingly, they approached one Dr.Parthasarathy, who is a mutual friend of the petitioner. The said Dr.Parthasarathy informed the petitioner that the respondents 7 & 8 in the writ petition had already twin daughters. Again the 8th respondent in the writ petition has delivered twins on 29.09.2016 at Saraswathy Nursing Home at Salem. The Doctor further informed that the respondents 7 & 8 expressed their inability to maintain three daughters and wanted to give the baby girl in adoption to the suitable parents. Thereafter, a ceremony was conducted by the petitioner and a girl child was adopted in the presence of their close relatives. The said adoption was held on 06.10.2016.

5. After a couple of years, during the year 2018, the respondents 7 & 8 started creating problems and demanded the child back. Thereafter, the respondents 7 & 8 have lodged a false complaint against the petitioner and the same was registered in Cr.13 of 2019. In the meanwhile, the petitioner has filed a suit in OS.No.297 of 2018 before the Sub Court, Mettur for declaration that the adoption is valid.

6. According to the petitioner, he received notice from the District Child Protection Officer to produce the child before



them. Hence, the petitioner filed a writ petition praying that a writ of mandamus to be issued directing the respondents 1 to 6 not to insist on the petitioner to produce the child. The Original Petition has filed to quash the FIR registering against the petitioner.

7. The learned counsel for the petitioner vehemently submitted that the adoption took place on 03.10.2016 and the police complaint was lodged in the year 2018. The learned counsel also submitted that the parents of the child and the respondents 7 and 8 have also participated in the ceremony. In which, the child was given in adoption to the petitioner and his wife. Therefore, the respondents 7 & 8 were willingly given the child in adoption, it may not be proper on the part of the respondents 7 & 8 to lodge a police complaint that too at a period of two years. The child does not even recognize her biological parents. The child is mentally attached with only to the petitioner and his wife. Therefore, it may not be proper on the part of the respondents 7 & 8 to insist the petitioner to production of the child. Similarly an FIR lodged against the petitioner is also highly misconceived. Therefore, the learned counsel prays for allowing the petition.

8. Head the learned Government Advocate appearing on behalf of the State and perused the records.

9. As rightly pointed out by the learned counsel for the petitioner the adoption was given way back in the year 2016. The respondents 7 & 8 passed two long years to prefer a police complaint. The petitioner has filed a original suit in O.S.No.297 of 2018 on the file of the Sub Court, Mettur. The suit has been taken on file and trial is going on. Therefore, without going into the merits of the case, the writ petition is disposed of by directing the petitioner to work out his remedy before the trial Court, where the suit filed. No directions can be issued in a matter of this nature based on the affidavit evidence. The parties will have to let in evidence and based on such evidence, the genuineness of the adoption would be decided by the trial Court.

10. Therefore, the Writ Petition is disposed of without going into the merits of the matter and the respondents 1 to 6 are directed not to insist the petitioner to produce the child and to wait for the outcome of the suit filed. No costs.



11. The Criminal Original Petition is also disposed of and the respondent police is directed not to take any coercive action against the petitioner and wait for the outcome of the suit where the genuineness of the adoption will be decided. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

rli

To

1. The Inspector of Police,
All Women Police Station,
Sooramangalam, Salem District.
2. The Social Defense Commissioner,
No.300, Purasaivakkam Highway,
Kellis, Chennai - 10.
3. The District child Protection Officer,
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DONBOSCO Anbu Illam Campus,
Mullivadi Gate,
Salem.
6. The Inspector of Police,
Karumalaikoodal Police Station,
Salem District.
7. The Sub Judge,
Mettur.



8. The Public Prosecutor,
High Court of Madras.

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CRL.O.P.NO.17523 OF 2019 AND
CRL.M.P.NO.8837 OF 2019 AND
W.P.NO.19562 OF 2019

SSI (CO)
PBS/27/09/2021