



WEB COPY

Crl.O.P.(MD)No.4027 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.4027 of 2019

and

Crl.MP(MD)No.2405 of 2019

S.Anthonysamy : Petitioner

Vs.

1.Sahayamery

2.Rejinamery

3.Minor Jesu

: Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., against the order, dated 24/08/2018 passed in Crl.R.P No.8 of 2018 on the file of the Principal District Judge, Thanjavur, in C.M.P No.5694 of 2017 in MC No.16 of 2015 on the file of the Judicial Magistrate No.II, Thanjavur.

For Petitioner : Mr.K.Baalssundharam

For Respondents : Mr.A.Arun Prasad

O R D E R

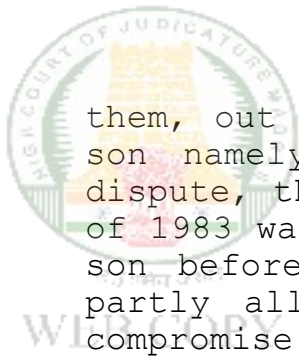
This petition has been filed seeking in order to set aside the order, dated 24/08/2018 passed in Crl.R.P No.8 of 2018 on the file of the Principal District Judge, Thanjavur, in CMP No.5694 of 2017 in MC No.16 of 2015 on the file of the Judicial Magistrate No.II, Thanjavur.

2.The facts in briefs:-

It is a case of maintenance and matrimonial dispute between the husband and wife. Before the trial court namely the Judicial Magistrate No.II, Thanjavur, the petitioner moved the petition under Indian Evidence Act seeking an order to subject the petitioner and the respondents herein to DNA profiling. That petition came to be allowed by the trial court. Against which, the revision has also been preferred and that also came to be dismissed. Against which, this criminal original petition has been filed.

3.The first respondent namely Sahayamery filed a petition under section 125 Cr.P.C seeking maintenance on the ground that the petitioner herein is her husband and other respondents were born to

<https://hcservices.ecourts.gov.in/hcservices/>

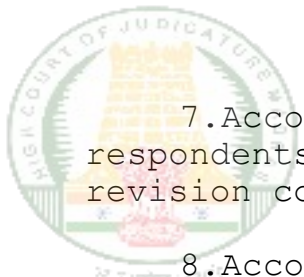


them, out of the above said wedlock. After the marriage, the first son namely Sebastin was born to them and out of some sort of dispute, they lived separately and the Maintenance case in MC No.317 of 1983 was filed by the first respondent on behalf herself and her son before the Judicial Magistrate No.II, Thanjavur and that was partly allowed in respect of son only. Thereafter, there was a compromise between them. Both of them started living jointly. Out of the subsequent joint living only the other respondents born. Again trouble arose because of the torture by the first respondent, she started living separately. Since she was sent out of the house without reasonable cause, seeking maintenance amount, the above said petition was filed. The petitioner has repudiated the allegation and stated that the first respondent is not the legally wedded wife of the petitioner and he also denied that the other respondents born out of the above said wedlock. According to him, he was forcibly taken to the Sub Registrar Office and his signature was obtained in the Register and later, it came to notice that it is the marriage certificate. Later, she filed pauper O.P No.10 of 1992 for declaration that she is the legally wedded wife of the petitioner and that was also dismissed. Later, the petitioner married one Josphine Marry in 1989. Out of the above said wedlock, two children were born to them. Now during the pendency of the above said proceedings, the respondents filed CMP No.5694 of 2017 seeking a direction to subject them to undergo DNA profiling test. That was allowed. Against which, revision has been preferred. As mentioned above, that also came to be dismissed and it is observed by the revision court that during the process of enquiry, birth certificate of the child were marked as Ex.B2 and B3. Only on the basis of the above said document, DNA profiling test was ordered. Since the first respondent is not in a position to bring the materials, otherwise than through the other evidence, it has been rightly ordered. Challenging the said order, this petitioner's mother filed MC No.317 of 1983, which was dismissed by the trial court and POP No.10 of 2015 was also dismissed. The revision petitioner married her brother-in law in the year 1989. Out of the wedlock only, two children were born to them. These things were not properly appreciated by both the courts.

4.Heard both sides.

5.The learned counsel appearing for the petitioner would submit that this petition will lie to the second revision, which is permissible under law. Already the revision has been dismissed by the Principal District Judge, Thanjavur and the petition filed under section 482 Cr.P.C will lie to the second revision.

6.It is settled position of law that once the revision has been dismissed by the competent court, section 482 Cr.P.C cannot be invoked of setting aside the said order, unless a strong case has been made out.



7. According to the learned counsel appearing for the respondents, very same ground that has been raised before the revision court has been mentioned in the grounds of appeal.

8. According to the learned counsel appearing for the petitioner, as mentioned in the grounds of appeal, the earlier proceedings have not been taken in to account.

9. The another point that has been projected by the learned counsel appearing for the petitioner is that against his will, he can not be subjected to DNA profiling test. When the paternity is in dispute, in the absence of any other evidence and in the absence of sufficient cause to show that the petitioner and the first respondent were not living together, after a compromise and after the lawful wedlock, the only remedy available to the first respondent is to prove the paternity of the respondents 3 and 4 only by way of DNA profiling. There is an observation made by the revisional Court. So I am unable to differ from the view that has been expressed by the revisional court.

10. Moreover, in respect of DNA profiling, it is settled law that a party cannot be compelled to undergo DNA profiling test. But when refuses to undergo DNA profiling test, then adverse inference can be drawn. So when such being the position, if the petitioner is not willing to undergo DNA profiling, naturally adverse inference as to be drawn against him. So I find absolutely no merit in this petition.

11. In the result, this criminal original petition stands **dismissed**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To,

1.The Principal District Judge,
Thanjavur.

2.The Judicial Magistrate No.II,
Thanjavur.

Crl.O.P. (MD)No.4027 of 2019
24/02/2022

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