



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.907 of 2021

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S.Jayalakshmi

...Petitioner/Petitioner/3rd Party/Victim

Vs.

1. P.Arumugam

Head Clerk,

District Munsif Court,

Trichy.

... 1st Respondent/Complainant

2. Sujatha

... 2nd Respondent/Accused

Prayer: This Criminal Revision Petition filed under Section 397, r/w.401 of Cr.P.C. to call for the records relating to the order passed by the Learned Judicial Magistrate No.II, Trichy in Crl.M.P No.1493 of 2021 in C. C No.955 of 2020 dated 20.11.2021 set aside the same and allow this revision petition.

For Petitioner

: Mr.M.Subash Babu

For Respondent

: No appearance for R1

: Mrs.AL.Gandhimathi for R2

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Judicial Magistrate No.II, Trichy in Crl.M.P No.1493 of 2021 in C. C No.955 of 2020 dated 20.11.2021.

2.The case of the petitioner is that she is the legally wedded wife of one late S.Subramanian. Their marriage was solemnized on 28.06.1964. Due to their wedlock, they gave birth to four female children. While being so, her husband died on 17.11.2016. After his demise, the petitioner applied for Legal-heirship certificate, before the Authority concerned. She came to understand that the second respondent herein also claimed to be the wife of Late S.Subramanian and through her one child was born. Therefore, she also applied for Legal-heirship certificate. Hence, the petitioner filed a suit along with her daughter in O.S.No.420 of 2017, for declaring that they are the legal heirs of Late S.Subramanian and consequently, for the relief of mandatory injunction, directing the revenue officials to issue legal-heirship certificate.



3.The second respondent also filed a suit in O.S.No.526 of 2017 on the file of II Additional District Munsif Court, Trichy, for declaring that they are the legal heirs of deceased S.Subramanian. In support of her case, she filed a birth certificate of her minor son, dated 13.09.2002, vide CA No.136 of 2002 as supportive document. On perusal of the said document, the petitioner found that it was a fabricated one and the same was also confirmed by the information received under the RTI Act, by the Tahsildar concerned. Therefore, the petitioner filed a petition in I.A.No.122 of 2018 in O.S.No.526 of 2017, on the file of II Additional District Munsif Court, Trichy, for taking action against the second respondent, as per Section 340 Cr.P.C and the same was allowed. As directed by this Court, the complaint was forwarded by the first respondent and the same has been taken cognizance in C.C. No.955 of 2020 on the file of learned Judicial Magistrate No.II, Trichy.

4.While being so, the petitioner filed a petition in Crl.M.P No.1493 of 2020, under Section 301(2) Cr.P.C. to assist the prosecution, since only on her instigation, the complaint was lodged under Section 340 Cr.P.C to take cognizance as against the second respondent herein. However, the said application was dismissed by the trial Court, for the reason that the defacto complainant is not warranted in this case. Because the petitioner is cited as a second witness by the prosecution and she can very well extend her co-operation by adding her valuable evidence before the trial Court. She can also file additional documents, if required to prove her case. It is relevant to extract hereunder Section 301(2) Cr.P.C.

301. Appearance by public prosecutors.

(2) If any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case. Therefore, the petitioner can very well assist the prosecution and as such the impugned order passed by the Court below is liable to be set aside.

5.In view of the above, this Criminal Revision Petition is allowed and the impugned order passed by the learned Judicial Magistrate No.II, Trichy, in Crl.M.P No.1493 of 2021 in C. C No.955 of 2020 dated 20.11.2021, is set aside. The Court below is directed to complete the trial within a period of six months from the date of a receipt of a copy of this order. The trial Court is also



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directed to comply with the directions issued by the Hon'ble Supreme Court of India, for speedy disposal.

Sd/-

Assistant Registrar (AS)

// True Copy //

11/03/2022

Sub Assistant Registrar(CS)

PNM

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

The Judicial Magistrate No.II,
Trichy.

COPY TO:

- 1.The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.SUBASHBABU, Advocate (SR-11351[F] dated 10/03/2022)

+1 CC to M/s.SL.GANTHIMATHI, Advocate (SR-11109[F] dated 10/03/2022)

ORDER IN

Cr1.R.C(MD)No.907 of 2021

09.03.2022

TP(CO)

GC(11.03.2022) 3P 7C