



C.R.P.(NPD)No.2202 of 2004 &
Crl.O.P.No.31897 of 2004

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD).No.2202 of 2004 and Crl.O.P.No.31897 of 2004

**C.R.P.No.2202 of 2004 and
Crl.O.P.No.31897 of 2004**

1.Subramaniam
S/o.Muthappa Nadar

2.P.Subramaniam
S/o.Pongiappa Gounder

.. Petitioners

Vs.

R.Baby

.. Respondent

Prayer in C.R.P.No.2202 of 2004: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 15.03.2004 made in I.A.No.1384 of 1998 in O.S.No.807 of 1998 on the file of the District Munsif Court, Kangeyam.

Prayer in Crl.O.P.No.31897 of 2004: Crl.O.P. is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.134 of 2004 pending before



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the Judicial Magistrate's Court, Kangeyam, Erode District, against the
petitioners and quash the same.

In both CRP and Crl.O.P.

For Petitioners : Mr. R.John Sathyan, Senior Counsel
for Mr.D.Gopal
For Respondent : Mr.C.Prakasam

COMMON ORDER

The revision and Crl.O.P. are posted together pursuant to the
orders passed by Hon'ble the Chief Justice.

2. Heard Mr.R.John Sathyan, learned Senior Counsel appearing for
the petitioners and Mr.C.Prakasam, learned counsel for the respondent. I
have carefully gone through the records.

3. C.R.P.No.2202 of 2004 arises out of a proceeding that was
initiated pursuant to the order of the Court in an application taken by one
Baby under Section 151 C.P.C. read with Section 195 of Cr.P.C. The said



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proceedings stood allowed and consequently, a criminal complaint was registered on 30.04.2004 by the learned District Munsif at Kangeyam. On the basis of the complaint given by the learned District Munsif at Kangeyam, summons were issued in C.C.No.134 of 2004 on the file of the Judicial Magistrate's Court at Kangeyam.

4. Challenging the order of the learned District Munsif at Kangeyam, directing registration of the complaint, C.R.P.No.2202 of 2004 has been filed. Challenging the summons issued in C.C.No.134 of 2004 on the file of the Judicial Magistrate's Court at Kangeyam, Crl.O.P.No.31897 of 2004 has been presented.

5. Two suits were initiated. They are O.S.Nos.57 and 60 of 1998. O.S.No.57 of 1998 was initiated by Baby and O.S.No.60 of 1998 was initiated by M.Subramaniam and P.Subramaniam as against the said Baby. They are suits and counter suits. O.S.No.60 of 1998 need not detain us long for long because that was dismissed for default on 19.08.1998.



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WEB COPY 6. In so far as O.S.No.57 of 1998 is concerned, the suit was presented on 02.03.1998. On 05.06.1998, soon after the Court reopened from vacation, an exparte decree was passed. To set aside that exparte decree, I.A.No.807 of 1998 was presented by M.Subramaniam, S/o.Muthappa Nadar. On 19.08.1998, the said application was posted for enquiry i.e., for examination in chief of P.W.1. P.W.1 as the record would show, is Subramaniam, S/o.Pongiappa Gounder. The cross-examination of P.W.1 was completed on 20.08.1998. It was posted for recording of the respondent evidence on 27.08.1998. On that date, Baby was examined in chief as R.W.1 and it was posted to 02.09.1998 for continuation. On 04.09.1998, I.A.No.807 of 1998 was dismissed.

7. After the dismissal of I.A.No.807 of 1998, a fresh petition was filed in I.A.No.1384 of 1998 on the ground that instead of Subramaniam, S/o.Muthappa Nadar going into the witness box, Subramaniam, S/o.Pongiappa Gounder went into the witness box.



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WEB COPY 8. According to the Court below as well as Mr.C.Prakasam, learned counsel for the respondent, this amounts to impersonation of the parties.

9. A perusal of evidence of P.W.1 dated 28.11.2003 would show that Subramaniam, S/o.Pongiappa Gounder had not deposed as if he is Subramaniam, S/o.Muthappa Nadar. But both the parties represented their respective cases. Both Subramaniam's are parties to the suit. I can take judicial notice of the fact, when a witness is called, he is called by his first name and not by his first name together with his father's name. Therefore, in all probabilities, the Assistant Bench Clerk would have only called for Subramaniam and Subramaniam, S/o.Pongiappa Gounder being present in Court, entered the witness box and deposed. The evidence also shows both Subramaniam's were present in Court and it is due to the similarity in names, that one Subramaniam went into the witness box instead of the other.

10. Impersonation means Subramaniam, S/o.Pongiappa Gounder should have deposed as if he is Subramaniam, son of Muthappa Nadar.



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That is not the case. Evidence shows, both of them have identified themselves correctly and name of father and age also have been deposed correctly to the Court. The learned trial Judge in a referral order, has in a cryptic manner said that it is a case of impersonation, without deciding how it is a case of impersonation. It is only due to the confusion in names that the evidence of one person has been deposed on behalf of the other.

11. Mr.C.Prakasam, would state that the basis on which the litigation had commenced, has also vanished because the mining lease, which had been granted, which is a subject matter of the suit had also expired. He would also state that Marappan, an Ex-MLA, Power of Attorney of Baby, is also no more.

12. I am unable to sustain the order of the trial Court in I.A.No.1384 of 1998 as it has not categorically stated that one-Subramaniam deliberately entered the witness box in order to impersonate as the other Subramaniam. A reading of the evidence shows



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otherwise, where the parties have properly identified themselves. At the time of recording evidence, the Court could have been cautious and confirmed, if a person summoned, who had entered the witness box is in fact Subramaniam, S/o.Muthappa Nadar. However that was not done. This is only an inadvertent mistake for which, they need not be visited with criminal prosecution.

13. With the above observation, unreasoned order in I.A.No.1384 of 1998 dated 15.03.2004 is set aside. Since the basis of the order for launching prosecution is set aside, Crl.O.P.No.31897 of 2004 is also allowed. The proceedings in C.C.No.134 of 2004 stands quashed. Consequently, C.R.P.No.2202 of 2004 and Crl.O.P.No.31897 of 2004 are allowed. No costs.

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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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V.LAKSHMINARAYANAN,J.

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To

1. The District Munsif, Kangeyam.
2. The Judicial Magistrate, Kangeyam
Erode District.

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