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Cr.R.C.No.1019 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM :

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

Cr.R.C.No.1019 of 2023
and CrI.M.P.No.8136 of 2023

M.Ashok

.. Petitioner

VS

1.P.Janani
2.Minor Dhurpad
(Rep. By mother / natural guardian
P.Janani)

.. Respondents

Petition filed under Sections 397 and 401 of Code of Criminal Procedure to set aside order dated 10.02.2023 passed in FCCMP No.190 of 2022 in FCMC No.14 of 2021 on the file of the Family Court Judge, Chengalpet.

For Petitioner : Ms.G.Sumitra

For Respondents : Mr.T.Shanmugaboopathi

ORDER

Challenge in this revision is to set aside order dated 10.02.2023 passed by Family Court Judge, Chengalpet in FCCMP No.190 of 2022 in FMC No.14 of 2021.



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2. The petitioner is the husband. The first respondent filed FMC No.14 of 2021 seeking maintenance of Rs.25,000/- per month from the present revision petitioner. The said petition is pending for adjudication.

3. In the meanwhile, the present revision petitioner filed FCCMP No.190 of 2022 seeking an order to send the first respondent for medical examination and to find out as to whether the first respondent had undergone vaginoplasty for attaining puberty by artificial method.

4. In the said petition, the present respondents filed a detailed counter and the learned Family Court Judge, Chengelpet considering the rival submissions made by the parties, dismissed the said petition vide orders dated 10.02.2023 by observing thus:-

"6. The petitioner had stated that the 1st respondent could never have normal sexual intercourse, and also insisted the petitioner that she will allow the petitioner to have sexual intercourse only twice a month and that it is also a medical fact that such woman cannot possibly have pregnancy normal way and that the 1st respondent ought to have become pregnant by artificial fertility and that it is pertinent to mention here that the 1st respondent several times demanded the petitioner to accompany her to the fertility



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hospital (Srishti Hospital Anna Nagar) for the sake of check up for which the petitioner flatly refused because there is no need to go fertility hospital within first 2 months post marriage and that the 1st respondent ought to have undergone artificial fertility by using someone's insemination and therefore the 2nd petitioner was born in that manner only. It is not the case of the petitioner that the 1st respondent did not have sex with him. He had stated that it is also a medical fact that such woman having sex twice a month cannot possibly have pregnancy normal way and that the 1st respondent ought to have become pregnant by artificial fertility cannot be accepted.

7. The respondent is always suspicious about the paternity of 2nd petitioner. This made him to file petitions one after the other for testing the paternity of the child. DNA test application was filed in IA No.151 of 2021 in HMOP No. 314 of 2020 and the same was dismissed against which the petitioner preferred CRP No.1151 of 2022 which was also dismissed and the matter was not denied by the petitioner.

8 The only intention of the petitioner is to cause mental agony to the respondent and to harass her. This court cannot be a mute spectator and watch all the harassment caused by the petitioner to the respondent. The test the paternity of the child the petitioner is filing petition one after the other first for DNA test and when that petition was dismissed he has come with the present petition for Vagino Plastering test. Once a matter is already decided and reached its finality again the same matter cannot be tried once again. Hence in the interest of justice this petition is dismissed."

5. Ms.G.Sumitra, learned counsel appearing for the



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revision petitioner contended that the first respondent gave birth to the second respondent by artificial insemination and that the present revision petitioner never had any intercourse with her during the relevant period. It is also her contention that the first respondent cannot become pregnant naturally and for finding out the same, she has to be sent for medical examination.

6. Per contra, Mr.T.Shanmugaboopathi, learned counsel for the respondents contended that the present revision petitioner had already filed an application in I.A.No.151 of 2021 in H.M.O.P.No.314 of 2020 seeking DNA test for the second respondent / child and the said application was dismissed, against which, the present revision petitioner also preferred C.R.P.No.1151 of 2022 before this Court. According to him, the said C.R.P.No.1151 of 2022 was also dismissed and thereafter no steps were taken by the present revision petitioner in this regard. Therefore, the learned counsel submitted that the present petition in FCCMP No. 190 of 2022 and the consequent revision are preferred only to harass the respondents.

7. At the outset, it may be observed that vaginoplasty is a procedure to construct or repair a vagina. It treats various medical



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issues, including vaginal injury caused due to child birth. It is also used to confirm / identify gender of a person.

8. At this stage, it is pertinent to point that in the application in I.A.No.151 of 2021 in H.M.O.P.No.314 of 2020, which was filed for subjecting the child to DNA test, the present revision petitioner had asserted that the first respondent is having illicit relationship with some other person. The learned Family Court Judge at Chengelpet had dismissed the said application and while passing orders also observed that it was not proved by the revision petitioner by adducing admissible evidence to show that the first respondent is having an illicit relationship with a third person.

9. On the contrary, in the present petition, the petitioner had alleged that the first respondent had undergone vaginoplasty and that she had given birth to the child by way of artificial insemination.

10. In any event, no useful purpose would be served by subjecting the present first respondent for medical examination to find out whether she has undergone vaginoplasty.



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11. Therefore, the observations of the learned Family Court Judge at Chengelpet that the intention of the petitioner is to cause mental agony to the first respondent and to harass her is perfectly justified and, therefore, I do not see any reason to interfere with the same.

12. Accordingly, this criminal revision case is dismissed.
Connected miscellaneous petition is closed.

28.07.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To

The Family Court Judge, Chengalpet.



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R. HEMALATHA ,J.

ssm

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