



Crl.R.C.No.1445 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2023

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THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.RC.No.1445 of 2023
and Crl.MP.No.12530 of 2023

M.Thirumalai ... Petitioner
Vs.
T.Madhumithra ... Respondent

Prayer : Criminal revision is filed under Section 397 r/w 401 of Criminal Procedure Code 1973 to set aside the order dated 17.12.2022 passed in MP.No.426 of 2020 in MC.No.388 of 2019 by the learned VI Additional Principal Family Court Judge, Chennai.

For Petitioner : Mr.M.Meenatchi.
For Respondent : Mr.S.Mahesh Kumar.

ORDER

Challenging the orders passed by the learned VI Additional Principal Family Court, Chennai dated 17.12.2022 in MP.No.426 of 2020 in MC.No.388 of 2019, the present revision has been filed.



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“8. While perusing the case records, it is found that the respondent has filed copy of her Birth Certificate, copy of her College Identity card and copy of her family card along with the petition in MC No.388 of 2019 as petition serial Nos. 1, 9 and 10 documents. In all the said documents, the name of the respondent's father name is mentioned as Thirumalai who is the petitioner herein. It is further seen from the certified copy of petition in OP.No.2738 of 2018 filed along with the affidavit of the petitioner dated 04.11.2022 that the petitioner herein has filed a petition along with the mother of the respondent Mrs. Priyalakshmi under section 13(B) of the Hindu Marriage Act to get dissolve their marriage by way of their mutual consent before the Principal Family Court, Chennai on 11.06.2018. In the said mutual consent divorce petition, petitioners had specifically admitted that the marriage between the petitioner and the said Mrs.Priyalakshmi was solemnised on 02.03.1998 at P.D.N.Kalyana Mandabam, ECR, Neelankarai, Chennai and the respondent herein is their daughter.

12. It is also seen from the serial No.3 document to the petition in MC No. 388 of 2018 that the



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respondent's mother Mrs. Priyalakshmi had executed a General Power of Attorney Deed in favour of the petitioner mentioning that the petitioner is her husband vide document No.412/2012 at Sub Registrar, Adyar on 06.06.2012. In the said General Power of Attorney Deed, the petitioner had also made his signature as one of the parties to the said document.”

4. Aggrieved over the order passed by the trial Court, the present revision is filed by the petitioner.

5. Ms.M.Meenatchi, the learned counsel appearing for the revision petitioner would contend that the respondent's mother was his erstwhile servant maid and that since she was also working in a hospital she manipulated the hospital records and obtained a false birth certificate stating that the present petitioner is the father of the respondent. Her further contention is that the mother of the respondent knew that the petitioner was already married to another woman and that the petitioner was forced to sign a divorce petition in OP.No.2738 of 2018 before the



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Family Court, Chennai. Unless the DNA test is taken, the revision petitioner would not be in a position to prove that the respondent was not born to him and therefore she prayed for setting aside the orders passed by the trial Court.

6. Per contra, Mr.S.Mahesh Kumar, learned counsel for the respondent contended that the trial Court had analysed all the aspects of the present case and by a well considered order dismissed the petition. He would further contend that the divorce petition in OP.No.2738 of 2018 which was filed by both the parties seeking annulment of marriage by mutual consent was dismissed, since both the parties retracted their original versions. It is his contention, that as per Section 112 of the Indian Evidence Act, any person born during the continuance of a valid marriage between his/her mother and any man shall be conclusive proof that he/she is the legitimate son or daughter of the parties to the marriage, unless non access between the parties to the marriage is satisfactorily proved. In the instant case, the present petitioner did not show that during the subsistence of marriage between the petitioner and the mother



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of the respondent, the petitioner did not have any access to the mother of the respondent. He therefore, prayed for dismissal of the present revision petition.

7. It is seen from the records that the mother and the daughter filed two separate maintenance cases in MC.No.386 of 2019 and 388 of 2019 before the VI Additional Principal Family Court, Chennai. In the petition under Section 13-B of Hindu Marriage Act, to dissolve the marriage by mutual consent, the present petitioner seems to have admitted that he married the mother of the respondent on 02.03.1998 at PDN Kalyana Mandapam, ECR, Neelankarai, Chennai. The said divorce petition was subsequently dismissed, since both the parties retracted from their original submissions. The respondent had filed a birth certificate and other school and college records, wherein the petitioner is shown as father of the respondent. The learned trial Court judge after considering all these documents had observed that there is no necessity for sending the parties for DNA profiling.



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10. Moreover, a perusal of the records shows that though the maintenance case was filed in the year 2019, the present petitioner entered appearance after five months, filed a petition seeking DNA profiling test only on 14.12.2020 and the intention of the petitioner appears to be to drag on the proceedings as far as possible.

11. Accordingly, the criminal revision is dismissed. Consequently, connected miscellaneous petition is closed.

21.08.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To

- 1.The VI Additional Principal Family Court, Chennai.
- 2.The Public Prosecutor, High Court Madras.



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