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Criminal Original Petition No.19953 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 05.09.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Criminal Original Petition No.19953 of 2023**  
**and Criminal Miscellaneous Petition No.13549 of 2023**

Ashok Maneksha

...Petitioner

Vs

1. Kalaivani  
W/o, Ashok Maneksha
2. Kathiresh  
S/o, Ashok Maneksha

... Respondents

**PRAYER** : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the entire records comprised in C.M.P.No.1402 of 2023 in M.C.No. 21 of 2020 on the file of Learned Judicial Magistrate, Mettupalayam and set aside the Order dated 07.06.2023 in C.M.P.No. 1402 of 2023 in M.C.No.21 of 2020 made by the Learned Judicial Magistrate, Mettupalayam.

For Petitioners

: Mr.B.Ramesh Babu



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**ORDER**

This Criminal Original Petition has been filed challenging the order passed by the Court below rejecting the request made by the petitioner to adjourn the proceedings in MC No.21 of 2020 and to await for the DNA report and thereafter, permit the petitioner to cross examine PW1.

2. Heard the learned counsel for the petitioner and this Court has carefully perused the materials available on record.

3. The respondent has filed a maintenance case before the Court below against the petitioner. The case is now at the stage of cross examination of PW1. The petitioner had earlier filed a divorce petition before the Sub-Court, Mettupalayam in HMOP No.117 of 2017 on the ground of mental cruelty and adultery. In that petition, the petitioner had filed an application under Section 112 of the Evidence Act, to direct the respondent to undergo DNA test since according to the petitioner, the child



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was not born to the petitioner and the respondent was living in adultery with some other person. This application came to be allowed by an order dated 29.01.2020.

4. The grievance of the petitioner is that the respondent did not subject herself to the DNA test and it was being dragged and in the meantime, the respondent filed the maintenance case before the Court below. It was contended that the very claim made by the respondent is unsustainable since the respondent had hardly lived for 13 days with the petitioner and the respondent was living in adultery and suppressing the same, the maintenance case was filed. In view of this stand taken by the petitioner, the petitioner had sought for an adjournment for cross examination of PW1 awaiting the DNA report and the Court below had rejected the said application.

5. In the considered view of this Court, there is already an order passed against the respondent directing the respondent to undergo DNA test.



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This order was passed in January 2020. It is more than three years since this order was passed and it was not complied with by the respondent. If ultimately, the respondent is not willing to subject herself to the DNA test, it is always left open to the petitioner to raise the plea of adverse inference under Section 114 (g) of the Indian Evidence Act. This clarity will sufficiently take care of the grievance expressed by the petitioner.

6. This Criminal Original petition is disposed of accordingly. If the Court below had already closed the evidence of PW1, it is left open to the petitioner to file an application to recall PW1 for cross examination and the Court below shall entertain the same and PW1 shall be cross examined on the same day she appears before the Court. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No  
Speaking order: Yes/No  
Neutral citation: Yes/No



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1. Judicial Magistrate, Mettupalayam
2. The Public Prosecutor, High Court, Madras

**N.ANAND VENKATESH, J**



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