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Crl.O.P.(MD)No.22338 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:12.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD) No.22338 of 2023

and

Crl.M.P.(MD) No.17462 of 2023

A.Xavier Michael Anand

... Petitioner/Petitioner

Vs.

J.Leena

... Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in connection with CMP.No.10312 of 2023 in DVC.No.13 of 2016 on the file of Judicial Magistrate No.I, Kuzhithurai, and set aside the order dated 09.11.2023 and allow CMP.No.10312 of 2023.

For Petitioner : Mr.S.Titus

ORDER

This Criminal Original Petition is filed to call for the records in connection with CMP.No.10312 of 2023 in DVC.No.13 of 2016 on the file of Judicial Magistrate No.I, Kuzhithurai, and set aside the order dated 09.11.2023 and allow CMP.No.10312 of 2023.



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2. The petitioner is the respondent before the trial Court in DVC No.13 of 2016. It is a long pending enquiry process. Pending enquiry, this petitioner filed an application under Section 311 Cr.P.C., seeking recall of P.W.1 to confront the birth certificate of the child by name Achilles Joseph Francis.

3. Now the case of the petitioner is that the above said child was born to the respondent herein and some other person, who is according to the petitioner is alleged paramour. Now, they are living together. Even though the birth certificate of the child was marked in DVC case as Ex.R.29, it was not put to the P.W.1 during the course of cross examination. Only for that purpose, the petitioner filed application under section 311 of Cr.P.C., before the trial Court, but it came to be dismissed, stating that there is no necessity for recalling of P.W.1 for confronting the birth certificate of the child.

4. Without confronting P.W.1, genuineness of the document cannot be brought on record. Since it is an allegation on the part of the petitioner that the child born to the respondent and some other person, necessarily he has to confront the same. Since it is the long pending matter, there shall be direction to the learned Judicial Magistrate No.1, Kuzhithurai,



to complete the enquiry process within a period of two months from the date of receipt of copy of this order. P.W.1 must be directed by the concerned Court to be present by fixing a particular date. On the date fixed, P.W.1 must be cross examined by the petitioner without fail. If any failure is noticed on the part of the petitioner, his further right will be forfeited forever.

5. With the above said direction, this Criminal Original Petition stands allowed.

12.12.2023

Index : Yes/No
Internet : Yes/No
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To

- 1.The learned Judicial Magistrate No.1, Kuzhithurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN. J.

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