



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.408/2024**

SAVIO JOSE XAVIER VIEGAS
aged 49 years, Son of late Antonio
Joazinho de Piedade Viegas,
R/o. H.No.418, Secreavaddo,
Chinchinim, Salcete-Goa.

... PETITIONER

Versus

1. DR. MARIANO GODINHO
Aged 69, Son of late Jose
Roque Godinho, Indian National,
R/o. House No.72, Calata,
Majorda, Salcette-Goa.

**2. THE CHIEF REGISTRAR OF BIRTHS
AND DEATHS**, Office of the Corporation of
the City Of Panaji, Panaji, Goa.

... RESPONDENTS

Mr J. A. Lobo, Advocate for the Petitioner.

Mr A. F. Diniz, Senior Advocate with Mr Ryan Menezes,
Advocate for Respondent No.1.

CORAM: VALMIKI MENEZES, J.

Reserved on: 22nd December 2025

Pronounced on: 3rd July, 2026

JUDGMENT :

1. The present Petition challenges the Order dated 13.12.2023 (Exhibit P-9) passed by the Commissioner, Corporation of the

City of Panaji in Case No. CCP/RBD/01/2023, whereby the complaint preferred by Respondent No.1 was allowed and the Petitioner's birth registration bearing No. B3931D/1999 dated 22.11.1999 was directed to be cancelled, along with consequential corrections in the statutory records. The impugned order is passed under Section 15 of the Registration of Births and Deaths Act, 1969 ('the Act' for short).

SUBMISSIONS:

2. Advocate for the Petitioner, Mr John Lobo has advanced the following submissions:

a. It was submitted that the Authority has acted in excess of jurisdiction conferred under Section 15 of the Act in cancelling the birth registration dated 22.11.1999 of the Petitioner as the Respondent had not made out any case of an act of fraud played by the Petitioner nor was there material to justify the cancellation of entry on the basis that the entry had been improperly made.

b. It was contended that the findings given by the Registrar are perverse and not based upon the material placed before him. It was contended that the Petitioner had produced his Baptism Certificate and host of other documents which included his School Leaving Certificate, a National Trade Certificate, Confirmation Certificate, and Affidavits of the two aunts of the Petitioner, who have vouched for the fact that the Petitioner's mother was

Efigenia Viegas and the father was Antonio Viegas. None of these documents were considered by the Registrar whilst passing the impugned order, thus vitiating the same. It was further contended that the Registrar ought to have conducted an inquiry into the matter before arriving at his conclusions, and not based his decision solely on the documents produced by the Respondent.

c. It was submitted that the first birth registered in 1983 is not of the Petitioner, even though there may be similarity in the name and that of Efigenia. It was contended that the Registrar was not called upon to decide which of the two certificates i.e. 1983 registration or 1999 registration was the correct one, since the Petitioner had disowned the 1983 registration as not being in reference to himself.

d. Reliance has been placed on *Luis Caetano Viegas v/s Estrelina Mariana R. M. A. Da'Costa and Ors.*¹

3. Learned Senior Advocate, Mr A. F. Diniz for Respondent No.1, has advanced the following submissions:

a. References were made to the provisions of Sections 13 and 15 of the Act and to the provisions of Rule 9 of the 1999 rules and Rule 10 of the 1970 Rules, to contend that the entry made in the 1999 registration is not in conformity with the rules, and therefore the impugned order has been properly passed. It was further contended

¹ (2002) 9 SCC 144

that in the face of the 1983 registration of the Petitioner's birth, which was at the behest of Efigenia as the informant, a second birth could not be registered by the Petitioner, more so when Efigenia was alive in the year 1999 and it was only she who could certify that the Petitioner was her own son. The learned Senior Advocate has made reference to the birth certificate of Efigenia, the Marriage Certificate, an FIR of 2024 and subsequent charge-sheet dated 11.10.2025 to contend that the Petitioner was investigated for the acts of fraud and making a fraudulent entry into the birth records, and such prosecution is pending before the concerned Magistrate.

4. Rule. Rule is made returnable forthwith at the request of and with the consent of the learned counsel for the parties.

CONSIDERATIONS

5. The main point that arises for determination in this petition is whether the entry made in the registry of births and death of the birth of the Petitioner on 22.11.1999 is in accordance with the provisions of sub-section (3) of Section 13 of the Registration of Births and Deaths Act, 1969 and rules framed thereunder; and further, whether in the facts of the case and in the light of the provisions of the Registration of Births and Deaths Act, 1969 and the Rules framed thereunder and the impugned order dated 13.12.2023 passed by the Commissioner of CCP, acting as Registrar, calls for any interference.

6. For the purpose of deciding the above issue, I presently make reference to some of the provisions of the Registration of Births and Deaths Act, 1969 relevant for this purpose. The Act was brought into force to provide for the regulation of registration of births and deaths and provide for appointment of a Registration Establishment and the hierarchy of the Authorities for that purpose. Section 7 empowers the State Government to appoint a Registrar for each local area comprising the area within the jurisdiction of a municipality, panchayat or other local Authority. The birth certificate of the Petitioner, that we are concerned with is one which the Petitioner claims was issued by the Registrar so appointed, for the Taluka of Tiswadi and is dated 22.11.1999.

Section 8 of the Act mandates that it is the duty of the persons specified in clauses (a) to (e), either orally or in writing, within a prescribed time, to inform the Registrar of a birth or death of any person.

Ordinarily, information of a birth or death is required to be given by the informant referred to in Section 8 of the Act within fourteen days. This period is specified as prescribed under sub-rule (2)(b)(i) of Rule 5 of the Goa, Daman and Diu Registration of Births and Deaths Rules, 1970 (1970 Rules); Subsequently, the period specified of fourteen days, under the 1970 Rules was raised to twenty-one days under sub-rule (3) of Rule 5 of the Goa, Daman and Diu Registration of Births and Deaths Rules, 1999 (1999 Rules). The 1999 Rules came into effect on 01.01.2000 and were issued in supersession of the 1970 Rules.

7. Section 11 provides that every person giving such information to the Registrar is required to sign the register maintained for recording such birth or death.

8. Section 13 provides for the circumstances under which delayed registration of births and deaths is permitted. Section 13 reads as under:

“13. Delayed registration of births and deaths. (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified therefor, but within thirty days of its occurrence, shall be registered on payment of such late fee as may be prescribed.

(2) Any birth or death of which delayed information is given to the Registrar after thirty days but within one year of its occurrence shall be registered only with the written permission of the prescribed authority and on payment of the prescribed fee and the production of an affidavit made before a notary public or any other officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order made by a Magistrate of the first class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee.

(4) The provisions of this section shall be without prejudice to any action that may be taken against

a person for failure on his part to register any birth or death within the time specified therefore and any such birth or death may be registered during the pendency of any such action.”

9. A plain reading of Section 13 would show that it provides for three different periods of delay in registering a birth or death, and the circumstances and requirements of law, which are the sine qua non of making an entry of delayed registration. The first period provided for by sub-section (1) of Section 13 is where such information is given to the Registrar after expiry of fourteen days (or twenty-one days under the 1999 Rules) but within thirty days of the occurrence of the birth or death. In such case, the Registrar himself may register the birth or death on payment of late fee as may be prescribed.

10. The second period provided under Section 13 is under sub-section (2) thereof where the delayed information is given to the Registrar after thirty days of the occurrence, but within one year of such occurrence; the Registrar shall register such birth only when written permission of the prescribed Authority on payment of the fee, and production of an affidavit made before a Notary Public. The prescribed Authority specified under the 1970 Rules was the Registrar whilst under the 1999 Rules it is with the written permission of the officer specified.

11. The third period reckoned under Section 13 is under sub-section (3) thereof is where any birth has not been registered within one year of its occurrence, the same can be registered after

one year only on an order of a Magistrate of the First Class and on a payment of late fee.

Under the 1970 Rules, sub-rule (3) of Rule 10 provides that the order referred to in sub-section (3) of Section 13 shall be that of a Magistrate of a First Class or a Presidency Magistrate and the same is quoted below:

“10. Authority for delayed registration and fee payable thereof under section 13. (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified in rule 5, but within thirty days of its occurrence, shall be registered on payment of a late fee of rupee one.

(2) Any birth or death of which information is given to the Registrar after thirty days, but within one year of its occurrence, shall be registered only with the written permission of the officer prescribed in this behalf and on payment of a late fee of rupees three and production of an affidavit made before a notary public or any other officer authorised in this behalf.

(3) Any birth or death which has not been registered within one year, of its occurrence, shall be registered only on an order of a Magistrate of the first class or a Presidency Magistrate and on payment of a late fee of rupees five.”

Similarly, under the 1999 Rules, sub-rule (3) of Rule 9 thereof provides that the order contemplated under sub-section (3) shall be that of a Magistrate of a First Class and on payment of the fees. Rule 9 reads as under:

“9. Authority for delayed registration and fee payable therefor.- (1) Any birth or death of which information is given to the Registrar after the expiry of the period specified in rule 5, but within thirty days of its occurrence, shall be registered on payment of a late fee of rupees two.

(2) Any birth or death of which information is given to the Registrar after thirty days but within one year of its occurrence, shall be registered only with the written permission of the officer specified in this behalf and on payment of a late fee of rupees five.

(3) Any birth or death, which has not been registered within one year of its occurrence, can be registered only on an order of a Magistrate of the First Class and on payment of a late fee of rupees ten.”

12. At this juncture, note must be taken of the fact that Section 30 of the Act vests power in the State Government to make rules, with the approval of the Central Government, by notification in the Official Gazette and such rules shall be laid as soon as may be, after it is made before the State Legislature. Sub-section (2) of Section 30 specifies what the rules may provide, and Clause (f) thereof allows the State to enact rules specifying the Authority which may grant permission for registration of a birth or death under sub-section (2) of Section 13. Clause (f) does not empower the State Government to frame rules with regard to the Authority under sub-section (3) of Section 13 which mandates that the order contemplated for making an entry of registration of a birth, beyond one year, can be only at the behest of a Magistrate of a First Class.

13. Section 30 reads as under:

“30. Power to make rules.- (1) The State Government may, with the approval of the Central Government, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for-

(a) the forms of registers of births and deaths required to be kept under this Act;

(b) the period within which and the form and the manner in which information should be given to the Registrar under section 8;

(c) the period within which and the manner in which births and deaths shall be notified under sub-section (1) of section 10;

(d) the person from whom and the form in which a certificate as to cause of death shall be obtained;

(e) the particulars of which extract may be given under section 12;

(f) the authority which may grant permission for registration of a birth or death under sub-section (2) of section 13;

(g) the fees payable for registration made under section 13,

(h) the submission of reports by the Chief Registrar under sub-section (4) of section 4;

(i) the search of birth and death registers and the fees payable for such search and for the grant of extracts from the registers,

(j) the forms in which and the intervals at which the returns and the statistical report under section 19 shall be furnished and published,

(k) the custody, production and transfer of the registers and other records kept by Registrars,

(l) The correction of errors and the cancellation of entries in the register of births and deaths,

(m) any other matter which has to be, or may be, prescribed,

[(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the State Legislature.]”

14. Thus, by a combined reading of the provisions of sub-section (3) of Section 13 and Section 30 of the Act, read with Rule 10 of the 1970 Rules or Rule 9 of the 1999 Rules, an entry of a birth after a period of one year of the occurrence must be ordered by Judicial Magistrate of the First Class and none else.

15. Section 15 of the Act provides for Correction or Cancellation of an Entry in the Register of Births and Deaths if such entry is erroneous in form, or substance or has been made fraudulently or improperly; such power is vested in the Registrar and would be exercised if it is proved to his satisfaction that one of these four causes exist. Section 15 reads as under:

“15. Correction or cancellation of entry in the register of births and deaths. If it is proved to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to such rules as may be made by the State Government with respect to the conditions on which and the circumstances in which such entries may be corrected or cancelled, correct the error or cancel the entry by suitable entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction or cancellation.”

16. In this regard, the 1970 Rules provide for the procedure for correction and cancellation of entries of registration in the records and is quoted below:

“12. Correction or cancellation of entry in the register of births and deaths under Section 15. (1) it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall enquire into the matter and if he is satisfied that any such error has been made, he shall correct the error (by correcting or cancelling the entry) as provided in section 15 and shall send an extract of the entry showing the error and how it has been corrected to the Administrator or the officer specified by it in this behalf.

(2) In the case referred to in sub-rule (1) if the register is not in his possession, the Register shall make a report to the Administrator or the officer specified by him in this behalf and call for relevant register and after enquiring into the matter, if he is satisfied that any such error has been made, make the necessary correction.

(3) Any such correction as mentioned in sub-rule (2) shall be countersigned by the Administrator or the officer specified by him in this behalf when the register is received from the Registrar.

(4) If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person a declaration setting for the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case,

(5) Notwithstanding anything contained in sub-rule (1) and sub-rule (4), the Registrar shall make report of any correction of the kind referred to therein giving necessary details to the Administrator or the officer specified in this behalf.

(6) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made he shall make a report

giving necessary details to the officer authorised by the Chief Registrar by general or special orders in this behalf under section 25 and on hearing from him take necessary action in the matter.

(7) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under section 8 or section 9.”

17. Under the 1970 Rules, sub-rule 6 of Rule 12 empowers the Registrar, if proved to his satisfaction, that an entry of birth has been fraudulently or improperly made, to take necessary action in the matter, which may include, cancellation of the entry. Thus, the two grounds available for exercising powers under Section 15 r/w. this Rule, are fraud or if the entry is made improperly.

18. The 1970 Rules were superseded by Government Notification, bringing in to force the Goa Registration of Births and Deaths Rules, 1999 (1999 Rules, for short) with effect from 01.01.2000. In that regard Rule 11 of the 1999 Rules reads as under:

“11. Correction or cancellation of entry in the register of births and deaths.- (1) If it is reported to the Registrar that a clerical or formal error has been made in the register or if such error is otherwise noticed by him and if the register is in his possession, the Registrar shall enquire into the matter and if he satisfy that any such error has been made, he shall

correct the error (by correcting or cancelling the entry) as provided in section 15 and shall send an extract of the entry showing the error and how it has been corrected to the Government or the officer specified by it in this behalf.

(2) In the case referred to in sub-rule (1), if the register is not in his possession, the Registrar shall make report to the Government or the officer specified by it in this behalf and call for the relevant register and after enquiring into the matter, if he is satisfied that any such error has been made, make the necessary correction.

(3) Any such correction as mentioned in sub-rule (2) shall be countersigned by the Government or the officer specified by it in this behalf, when the register is received from the Registrar.

(4) If any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

(5) Notwithstanding anything contained in sub-rule (1) or sub-rule (4), the Registrar shall make report of any correction of the kind referred to therein giving necessary

details to the Government or the officer specified in this behalf.

(6) If it is proved to the satisfaction of the Registrar that any entry in the register of births and deaths has been fraudulently or improperly made, he shall make a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf under section 25 and on hearing from him, take necessary action in the matter.

(7) In every case in which an entry is corrected or cancelled under this rule, intimation thereof should be sent to the permanent address of the person who has given information under section 8 or section 9.”

In substance, there is no change effected in sub-Rule 6 of Rule 11 of the 1999 Rules. Under both these sets of Rules, and under sub-rule (6) of Rule 11 which applies to the present case, the Registrar has the power to take necessary action in the matter, if it is proved to his satisfaction that such entry is made fraudulently or improperly.

19. I will now consider the facts of the present case and whether, on the material before the Registrar, as produced by the rival parties, a case has been made out for cancellation of the entry of birth dated 22.11.1999, and whether the impugned order dated 13.12.2023 passed by the Registrar is in consonance

with the powers under Section 15 of the Act and the 1970 Rules and the 1999 Rules.

20. According to the Petitioner, as stated in his Reply dated 06.05.2022 to a notice issued by the Registrar (Commissioner of CCP), his birth, “must have been” registered by his mother, which was done, according to the Petitioner based on his Baptism records. The Baptism record, according to the Petitioner was of 25.12.1999 (actually 1975); the Petitioner has claimed that the birth registration under No.B/3931D/1999 (hereinafter referred to as 1999 registration) is the correct birth registration of the Petitioner. He also averred that he was issued a passport bearing No. A 2439869 on 23.04.1997 “which was in conformity with birth record under Registration No. B/3931D/1999”.

21. The Respondent had filed objections/ complaint dated 05.04.2022 to the Registrar in which he has alleged that the Petitioner was born to one Rosy Correia who was the maid to Efigenia Sabina Blanche Viegas (Petitioner claims to be her son) and his Birth was registered bearing No.B1672/1983 dated 21.06.1983 (hereinafter referred to as 1983 registration); the Respondent alleged that since Rosy lived at Mercedes, the Birth was registered before the Commissioner of CCP (Registrar at Panaji), and the Live Birth register recorded Rosy as the mother, name of the father as “unknown” and Efigenia S.B to be the “informant”. It is when the Petitioner claimed a share in the ancestral property of Efigenia Sabina Blanche Viegas that the Respondent discovered vide Application under RTI Act made to the office of the Commissioner of CCP, that the Petitioner had second time

registered his birth bearing number B/3931D/1999 dated 22.11.1999 wherein the Live Birth register recorded name of his mother to be Efigenia Sabina Blanche Viegas dos Tres and the name of the father to be Antonio Joaozinho e Piedade Viegas. The Respondent further alleges that the birth entry of the year 1999 makes a reference to an order of the Mamlatdar (Executive Magistrate).

22. It is to these allegations that the Petitioner filed his aforementioned Reply dated 06.05.2022 claiming that the 1983 registration does not relate to himself and the entry in the 1983 registration was not done by the Petitioner. Thus, the Petitioner disowns his certificate and entries made in the 1983 registration.

On the first round of the litigation the Commissioner (Registrar) by order of 26.05.2022, considered the 1983 registration and the circumstances under which the 1999 registration was done, and has held that the second birth registration of the year 1999 could not have been made since the Petitioner's birth was already registered in 1983. This order came to be set aside by the Chief Registrar of Births and Deaths by order of 31.01.2023. A challenge to this order was dismissed by this Court in its order of 31.08.2023 directing the Registrar to decide the matter afresh.

23. On remand, the Respondent filed a further Complaint/Objection dated 06.10.2023 on the same contentions and allegations made in his original first complaint dated 05.04.2022 and further alleged that the 1999 Registration was completely

false and the recordings made on the Live Births register are fraudulently made, as Efigenia's maternal house was in Calata, Majorda and matrimonial house was at Chinchinim and she never resided in Panaji, where "home delivery" of the Petitioner could have taken place. He further contended that Efigenia never had any children and the entry made in the 1999 register, of she having three children is false. Along with these objections the Respondent produced Baptism Certificate issued by the Vicar of the Chinchinim Church stating that one Jose Savio Viegas was baptized on 25.12.1975 and was the "adoptive" child of Antonio Viegas and Efigenia Godinho. The birth certificate of Efigenia was also produced stating she was born on 29.12.1927 and her marriage certificate, which was produced stating the marriage took place on 08.09.1960. The death certificate of Efigenia was also produced stating she expired on 04.05.2014.

24. The Petitioner, vide his reply dated 20.10.2023, denied the allegations made by the Respondent and contended that the 1983 registration pertains to some other person called "Savio Viegas" and not himself and placed reliance on the school records where the name of the parents was recorded to be Efigenia and Antonio. In this reply the Petitioner has not produced his passport or made reference to it as was done in his earlier reply dated 06.05.2022. His reply has also not offered any explanation for why the 1999 registration was not at the behest of Efigenia, when she was alive at the relevant time and passed away only on 04.05.2014.

25. On the aforementioned pleadings and documents produced by the Petitioner and Respondent, it would be advantageous to

state the undisputed facts in chronological order; the same are set out hereunder in a tabular form:

DATE	EVENT
29.12.1927	Efigenia was born and her birth is registered as Efigenia Sabina Blanche dos Tres Ave Maria Godinho.
08.09.1960	Antonio and Efigenia were married. Efigenia was 33 years old.
31.05.1969	Registration of Births and Deaths Act 1969 was enacted.
01.01.1971	Registration of Births and Deaths Act 1969 came into force in Goa.
01.01.1971	The Goa Registration of Births and Deaths Rules, 1970
11.06.1975	The Petitioner and Respondent both claim to be the birth date of the Petitioner.
25.12.1975	Petitioner has produced a Baptism Certificate stating Efigenia and Antonio to be the parents, and his own name to be Jose Savio Xavier Viegas whilst the Respondent has produced a Baptism Certificate of the same Church stating Efigenia and Antonio to be the “Adoptive” parents.
21.05.1981	Antonio passed away.
21.06.1983	Registration of a live birth entry exists in the records of the Panaji Municipal Council in the name of Savio Viegas; the entry is stated to be at the behest of Efigenia S.B. Dos Tres

	A.M.G. as the informant, who has counter signed the register; the entry of birth is of “Savio Viegas”. The registration entry also states the mother of the child to be Rosy Fernandes Correia, aged 20, resident of Chinchinim and the father to be “unknown” and this register is counter signed by the Registrar. This registration entry is not challenged by the Petitioner but the Petitioner disowns the same as being that of his birth.
23.04.1997	The Petitioner claims that he was issued a passport bearing No.A 2439869 on 23.04.1997 “which was in conformity with the birth record under Registration No.B/3931D/1999”. This passport has been furnished by the Petitioner only in this Court.
22.11.1999	A live birth registration is made in the Register of the Panaji Municipal Council recording the birth of Savio Jose Xavier Viegas to be 11.06.1975; the parents’ names are entered as Antonio Joazinho de Piedade Viegas and Efigenia Sabina Blanche Viegas , aged 32 years; the entry is at the behest of Savio Jose Xavier Viegas, who is shown to be the third child of his parents. In the remarks column, it states that the entry is made on an order No.MAM/RBD/99 dated 09.11.1999 (purportedly of the Mamlatdar). This entry is not counter signed by the Registrar. It is this entry that is challenged by the Respondent and sought to be cancelled.
01.01.2000	The Goa Registration of Births and Deaths Rules, 1999 came into effect.

04.05.2014	Efigenia passed away.
05.04.2022	Objections/complaint for cancellation of the 1999 registration was filed by the respondent.

26. It is on the basis of these facts that the Registrar was called upon to decide and exercise jurisdiction under Section 15 of the Act and the 1999 Rules. This Petition in which supervisory jurisdiction under Article 227 of the Constitution of India has been invoked, requires to examine whether the Registrar has passed the impugned order dated 13.12.2023 within the bounds of powers and jurisdiction vested under Section 15 of the Act and the 1999 Rules framed thereunder.

27. The 1983 registration of birth is not challenged by the Petitioner. It has been examined by the Registrar that since the Respondent claims that 1983 registration pertains to the entry of birth of the Petitioner, which position has been denied by the Petitioner and has stated that the 1983 registration does not pertain to himself.

28. The 1983 registration refers to the birth of Savio Viegas which is similar to the Petitioner's name. The entry is made at the behest of Efigenia Viegas of Chinchinim, who has signed in the live birth register as the informant. The signature of Efigenia has not been denied by the Petitioner. The 1983 registration is also counter signed by the Registrar of Births and records the mother's name as Rosy Fernandes Correia, aged 20, of Chinchinim and

father's name to be unknown. The date of birth is 11.06.1975 which is the same as claimed by the Petitioner. Thus, the names on this register have a marked similarity to the name, claimed by the Petitioner to be his mother; the date of birth is exactly the same whilst Efigenia is stated to be from Chinchinim, which is also the claim of the Petitioner. The finding arrived at by the Registrar, on the basis of these facts, that the birth of the Petitioner has already been registered and the 1983 registration is based upon material before the Registrar and therefore does not call for interference, since this finding of fact cannot be termed as wholly perverse.

29. From the birth certificate of Efigenia, who the Petitioner claims to be his mother, it is not in dispute that she was born on 29.12.1927 and would therefore be aged 48 in 1975, when the Petitioner was born; it is also not in dispute from the death certificate of Efigenia that she passed away in the year 2014 and was alive when the entry of birth was made in the 1999 registration. At the relevant time the Petitioner was aged 24 years and it would be logical that the 1999 registration ought to have been by Efigenia herself, as the mother of the Petitioner.

In the first reply dated 06.05.2022 of the Petitioner he claims that the entry “must have been” registered “by his mother”, and he further claims that it was done based on baptism records. The 1999 registration however states that the informant was the Petitioner himself. There is no explanation even in the second reply dated 20.10.2023 as to why the Petitioner could not have made the 1999 registration entry through Efigenia, who he claims

was his mother, since she was available and alive at the relevant time.

30. Sub-section 3 of Section 13 of the Act prohibits any entry of birth being registered after expiration of one year from the birth and the occurrence of the birth, unless orders to that effect are obtained from Judicial Magistrate of the First Class. The Petitioner claims to be born on 11.06.1975 and therefore, his birth could certainly not be registered in the year 1999 in the absence of an order, so to register the same, from a Judicial Magistrate. Even the 1970 Rules which were applicable in the year 1999 i.e. Rule 10 specifically requires an order of the Magistrate of the First Class. On this count itself, and in the absence of the same order, it is an accepted position by the Petitioner, the birth could not have been registered and therefore the 1999 registration is improperly done. The cancellation of the 1999 registration therefore, on this premise itself would be justified and the impugned order must therefore be sustained on this ground alone.

31. Rule 11 of the 1999 Rules which provides for the procedure of correction or cancellation of an entry in the Register of Births and Deaths empowers the Registrar to conduct such inquiry into the circumstances under which an entry of birth was made in the Register and sub-rule 6 thereof stipulates that if it is proved to the satisfaction of the Registrar that such an entry was fraudulently or improperly made, he shall make a report to the Chief Registrar, and take necessary action in the matter. In the present case, without entering into the question of whether the 1999

registration entry was a produce of fraud by the Petitioner, the entry was certainly made in contravention of the requirements of sub-section 3 of Section 13 of the Act, as the entry is in the absence of an order of the Magistrate of the First Class. It is another matter of course that the Respondent has lodged an FIR claiming the entry to have been fraudulently made, which FIR was registered under No.118/2024. A charge-sheet bearing No.110/2025 has also been filed before the Court of the JMFC, Mercas, Goa. However, considering that the criminal prosecution is before an appropriate Court, and that matter would be decided upon evidence to be led before the Magistrate, I refrain from recording any finding as to whether the entry of the 1999 registration is based upon fraud committed by the Petitioner.

32. An attempt was made to argue on behalf of the Petitioner that the entry of the 1999 birth registration was at the behest of an order dated 11.09.1999 of the Mamlatdar of Tiswadi, who is an Executive Magistrate, and that would suffice to make the entry of birth in compliance with sub-section 3 of Section 13 of the Act. This contention has however, to be rejected for more than one reason.

Sub-section 3 of Section 13 of the Act specifically provides for entries of birth to be made after one year from the occurrence of the birth under the orders of a Magistrate of the First Class. I have already held in the preceding paragraphs that the intention of the Legislature was to allow for entries to be made after one year only on the inquiry of a Judicial Magistrate of the First Class and not a Magistrate of any other class referred to under the

Criminal Procedure Code, or now under the BNSS. Thus, orders of Executive Magistrates or Magistrates of the Second Class such as the Mamlatdar, to justify entries under sub-section 3 of Section 13 of the Act have been specifically ruled out by those provisions. In some States, under the Rules framed under Section 30 of the Act, a provision has been made for entries under orders of Executive Magistrates. Such entries have been considered by various High Courts and after examining the rule making power under Section 30, of the State Government, it has been consistently held that the State Governments have no powers to appoint an Executive Magistrate in place of Magistrate of the First Class, as is required under sub-section 3 of Section 13 of the Act.

33. Even on a reading of Section 30, sub-section 2 thereof provides the specific areas in which the Rule making power is conferred on the State Government. These are found under clauses (a) to (m) of sub-rule 2. Clause (f) empowers the State Government to make rules to provide for the authority which may grant permission for registration of a birth or death under sub-section 2 of Section 13 of the Act, but does not empower a State to dilute the mandate of Section 13, and appoint for the purpose of sub-section 3 thereof, an Executive Magistrate or Mamlatdar in the place of a Magistrate of the First Class. All that it empowers is to specify which Magistrate of the First Class in a State is conferred or designated for the purpose of exercising powers under sub-section 3 of Section 13 of the Act. For the State of Goa, both, 1970 Rules and the 1999 Rules provide for orders under sub-section 3 of Section 13 of the Act to be passed by a Magistrate of the First Class. The entry made at the behest

of the Petitioner in the 1999 registration, if taken to be at the behest of a Mamlatdar (Executive Magistrate), as argued, would therefore be an error without any jurisdiction conferred under sub-section 3 of Section 13 of the Act, and therefore such entry must be held to be “improper”.

34. I am fortified in taking this view by a similar view taken by the Madhya Pradesh High Court in *Kallu Khan v/s State of M.P and Ors.*². A Division Bench of the Madhya Pradesh High Court, in a criminal matter, whilst examining the entry of birth of the victim, has considered whether an entry of birth on the order of an Executive Magistrate could be considered valid, and has concluded thus:

“18. If section 13(3) and 30(f)(g) are seen in juxtaposition then it makes the legislative intent clear that by section 13(3) of the Act of 1969, Parliament has given the authority to Judicial Magistrate First Class (or Presidency Magistrate) to verify the correctness of the birth or death if not registered within one year of its occurrence and understandably so because after one year dispute and discrepancies may occur in respect of date of birth or death of a person.”

35. Perusal of section 30 of Act of 1969 reveals that authority/power to make rules to the State Government has been given by the Parliament in respect of section 13(2) and in respect of fees payable for registration is made under section 13. But very specifically, section 13(3) is not under the purview of Rule Making Authority of State Government. In fact, sub-section (2)

of section 30 starts with following words: "*In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for*", therefore, State Government can make rules as per the letter and spirit of section 30 and 13(3) of Act of 1969 only and cannot go beyond that.

36. In the State of Madhya Pradesh, in exercise of powers conferred by section 30 of the act of 1969, State Government made rules namely M. P. Registration of Births and Deaths Rules, 1999. Earlier rules with the nomenclature Registration of Births and Deaths M. P. Rules, 1973 were repealed by the Rules of 1999, therefore, at present Rules of 1999 are in existence.

37. Here, Rule 9 is worth consideration because it gives authority for delayed registration and fee payable. Rule 9 of Rules of 1999 is reproduced hereinbelow for ready reference:-

"9. Authority for delayed registration and fee payable therefore. (1) Any birth or death of Which information is given to the Registrar after the expiry of the period specified in Rule 5 but within thirty days of its occurrence, shall be registered on payment of a late fee of rupees two.

(2) Any birth or death of which information is given to the Registrar after thirty days but within one year of its occurrence, shall be registered only with the written permission of the office authorised in this behalf and on payment of a late fee of rupees five and on the officer authorised in this behalf by the State Government.

(3) Any birth or death which has not been registered within one year of its occurrence, shall be registered only on an order of a Magistrate of the first class or an Executive Magistrate and on payment of a late fee of rupees ten."

38. Perusal of Rule 9(3) indicates that with Magistrate of First Class (apparently JMFC), the authority of Executive Magistrate has also been inserted, which, if is read in consonance with section 13(3) and section 30(2)(f) and (g) of Act of 1969, then it gives an impression that the Act nowhere provides any authority to Executive Magistrate to deal with delayed registration, but Rules included him creating the duty, may be regarded as the only manner of enforcing the duty.

39. Rule 13(3) in specific terms gives authority to the Magistrate of First Class (or a Presidency Magistrate) to exercise authority for delayed registration but nowhere gives any authority to Executive Magistrate. Even otherwise, spirit of section 13(3) indicates that correctness of birth or death is to be made after due verification by a Judicial Magistrate of First Class and that verification can only be made by way of a judicial proceeding, may it be a summary proceeding, but certainly as per recognized principles of adjudication.

40. A Judicial Magistrate of First Class has all the necessary tools including to call witnesses, requisition of record from any public authority, compelling the attendance of officers/witnesses and appreciating the rival submissions and evidence beside other

tools of adjudication. Executive Magistrate is not equipped with such adjudicatory tools including the authority as referred above. Therefore, understandably, legislative intent under section 13(3) was to confer jurisdiction over a Judicial Magistrate of First Class only and not otherwise.

41. Careful reading of Section 30 of Act of 1969 if seen in juxtaposition to Section 20 of the General Clauses Act, 1897, it makes the case further clear that State Government could not have framed Rules contrary to the directions contained in section 30 of Act of 1969. In other words, the Attempt cannot exceed the Authority Section 20 of General Clauses Act, 1897 is reproduced hereinbelow for ready reference:

"Section 20. Construction of notifications etc., issued under enactments. - Where, by any Central Act or regulation, a power to issue any notification, order, scheme, rule, form or bye-law is conferred, then expressions used in the notification, order, scheme, rule, form, or byelaw, if it is made after the commencement of this act, shall unless there is anything repugnant in the subject or context, have the same respective meaning as in the Act or Regulation conferring the power."

42. It appears that concept of incorporation of Executive Magistrate in whole gamut of scheme appears to be after reframing of Criminal Procedure Code in 1973; wherein, certain powers were given to the Executive Magistrates also but even then, it does not help the cause of appellant or for that matter

cause of any Executive Magistrate to entertain cases of delayed registration.

43. Section 3(4)(a) establishes authority of a Judicial Magistrate of First Class in the realm of section 13(3) of Act of 1969 because appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or any penalty or detention in custody pending investigation etc. is in the domain of Judicial Magistrate only. Here section 23 of Act of 1969 talks about penalties and any omission or failure on the part of a person as referred in said provision may attract penalty and therefore, delayed registration of births and deaths is a serious business which can only be resolved by way of appropriate proceedings before a Judicial Magistrate of First Class because of operation of section 13(3) of Act of 1969 which involves appreciation/sifting of evidence and use of all the adjudicatory tools to reach to the conclusion. Executive Magistrate mainly relies upon Affidavits of parties and cursory inquiry by some revenue officer, here and there.

44. Section 3(3) of Criminal Procedure Code also contemplates that any reference to a Magistrate of the First Class in any enactment passed before the commencement of Code shall be construed as a reference to a Judicial Magistrate of the First Class. Said sub-section starts with the words "unless the context otherwise requires", meaning thereby in normal/general procedure, Magistrate of First Class shall be construed as a reference to a Judicial Magistrate of First Class and if the context in the present controversy is to be seen then in view of the

discussion made above, specially in view of the legislative intent, as surfaced in section 30 of the Act of 1969, it appears that said legislative intent is clear and it does not require the context to be interpreted otherwise. In context of section 30 and 13(3) of the Act of 1969, Magistrate of First Class shall be construed as a reference to a Judicial Magistrate of First Class as per Code of Criminal Procedure, 1973. On this count also, case of appellant fails.

45. Therefore, legislature rightly kept the involvement of Executives Magistrate out of this purview. In fact, delayed registration may entail serious repercussions; wherein, an adult accused may represent himself as juvenile by manipulation of records and may go scotfree or a Minor victim may be represented as Major to take the accused out of the clutches of POCSO Act etc. and many more ramifications including National Security may crop up.

46. Even otherwise, it is the solemn duty of every citizen to get births and deaths of their near and dear ones registered so that exact population figures available to the Government may help the Government to formulate policies for welfare of the people. If controversy is seen from this vantage point also, even then delayed registration has wider ramifications.

47. Therefore, in the considered opinion of this Court, the Rules of 1999 framed in exercise of powers conferred under section 30 of Act of 1969 cannot go beyond what is prescribed in the statute itself.

48. Therefore, the inclusion of Executive Magistrate in Rule 9 of Rules of 1999 needs to be struck down/read down to the extent that delayed registration of births and deaths can only be verified before the Judicial Magistrate of First Class of the concerned jurisdiction and Executive Magistrate shall not be allowed to exercise the jurisdiction in respect of delayed registration of births and deaths as per section 13(3) of Act of 1969. Accordingly, exercising the inherent and extraordinary powers so vested, we strike down the authority given to Executive Magistrate as per Rule 9 of Rules of 1999 and confines the jurisdiction to a Judicial Magistrate First class in State of Madhya Pradesh.

49. In the present case, Tahsildar conducted a summary enquiry and mainly on the basis of application and affidavit of father of corpus, one Panchnama of some witnesses and school leaving certificate of different schools came to the conclusion of date of birth of corpus as 2-5-2003, which in fact is a sham proceeding and non est in the eyes of law. CMO issued birth certificate on the basis of directions given by Tahsildar on 10-6-2020 in the capacity of Executive Magistrate. Therefore, said birth certificate stands quashed and would not be treated as valid birth certificate in the eyes of law.

50. In the cumulative analysis, writ appeal preferred by appellant fails. However, appellant shall be at liberty to move appropriate proceedings in accordance with law for delayed registration of birth of corpus before concerned judicial

Magistrate First Class as per section 13(3) of the Act of 1969 and in accordance with law, if such remedy is available to him.

51. Before parting, it is made clear that Executive Magistrate in the State Government shall not exercise any jurisdiction in respect of cases of section 13(3) of Act of 1969 where non-registration of births or deaths exceeds one year of its occurrence. For rest of the provisions including section 13(1) and (2), proceedings as per the said provisions shall continue. This observation is confined to cases in respect of section 13(3) of the Act of 1969 only and not for other provisions of Act of 1969.

52. The date of birth of the Petitioner 11.06.1975 is not in dispute by any of the parties. The signature of Efigenia in the 1983 registration as the informant is not denied by the Petitioner. The Petitioner claims that his passport issued on 23.04.1997, was on the basis of the entry of birth effected on 22.11.1999. Though the Petitioner's passport was neither produced before the Registrar nor annexed to this Petition, a photocopy thereof was tendered to this Court on conclusion of the arguments. Perusal of the passport would reveal that the name of the Petitioner's father is shown to be one "John Viegas" (though his birth certificate of 1999 shows his father as "Antonio Joazinho Piedade e Viegas") whilst the 1983 registration shows the father to be "unknown". The passport records Efigenia Viegas as his mother. The passport which is of 1997 is obviously not issued on the basis of a birth entry under the 1999 registration. The father's name also vastly differs from the one shown in the 1999 registration.

53. Additionally, the 1999 Registration records the Petitioner to be the third child of Efigenia, though the Respondent has vehemently opposed this contention in his reply and stated that Efigenia never had any children and he was not aware of her being pregnant her entire life. The Petitioner has not produced any material before the Registrar to name his other two siblings or even substantiate the entry that Efigenia had three children. Thus, all the explanations offered by the Petitioner for the discrepancies and mismatch in the 1999 registration would themselves provide a cause for cancellation of this registration.

54. That apart, the Petitioner alone could have produced the copy of the order dated 11.09.1999 of the Mamlatdar, which is not found anywhere on record. The registration entry is also not counter signed by the Registrar. The entry is made at the behest of the Petitioner himself and not at the behest of Efigenia who he claims is his mother and was alive till 2014. There is no explanation offered for why Efigenia herself did not affect the Petitioner's entry of birth, or appear before a Magistrate of the First Class to participate in such inquiry as is contemplated under sub-section 3 of Section 13 of the Act, which would have cast no doubt on an entry being made of the Petitioner's birth at the behest of the very person who he claims is his mother. The discrepancies in the conduct of the Petitioner coupled with the fact that the procedure followed for making the 1999 entry were in complete breach of the provisions of the Act, would lead me to take a view that the impugned order does not call for any interference.

55. For all the aforementioned reasons, there is no case made out for interference with the impugned order in writ jurisdiction of this Court. Petition is dismissed. Rule stands discharged.

VALMIKI MENEZES, J.