

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

FRIDAY, THE 1ST DAY OF JULY 2022 / 10TH ASHADHA, 1944

OP(CRL.) NO. 305 OF 2022

C.M.P.No.2100/2022 in MC 34/2020 ON THE FILE OF THE JUDICIAL

MAGISTRATE OF FIRST CLASS, CHITTUR, PALAKKAD

PETITIONER/PETITIONER:

MADESWARI
AGED 62 YEARS
WIFE OF MANICKAM,
THOTTICHIPALAM HOUSE, PLACHIMADA,
KANNIMARI P.O., CHITTUR TALUK,
PALAKKAD DISTRICT, PIN - 678534.

BY ADVS.
SARATH M.S.
B.PREMNATH (E)

RESPONDENT/RESPONDENT:

K.MANICKAM
AGED 66 YEARS
SON OF KULANTHAIVEL MUDALIYAR,
RESIDING AT AMBAL KRIPA ILLAM, RAM NAGAR,
COIMBATORE, TAMILNADU-641 009,
(SHOWN IN THE M.C. AS MANIKKAM,
SON OF KALANTHAIVEL MUTHALIYAR, 555,
OPPANAKARA STREET, COIMBATORE, TAMIL NADU,
RESIDING AT AMBAL KRIPA, ILLAM, RAM NAGAR,
COIMBATORE, TAMIL NADU, PIN - 641009.

BY ADVS.
Santhosh Mathew
ARUN THOMAS
ANIL SEBASTIAN PULICKEL
VEENA RAVEENDRAN
KARTHIKA MARIA
SANITA SABU VARGHESE
NANDA SANAL
KURIAN ANTONY MATHEW
MANASA BENNY GEORGE

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON
01.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Ext.P6 order passed by the Judicial First Class Magistrate, Chittur in a proceeding under the Domestic Violence Act (for short 'the D.V.Act') is under challenge.

2. The petitioner herein filed M.C.No.34/2020 against the respondent under Section 12 of the D.V. Act claiming various reliefs. The petitioner is aged 61 years and the respondent is aged 67 years. According to the petitioner, she is the legally wedded wife of the respondent. It is alleged that her first husband (Rajendran) deserted her in the year 1980 and thereafter, she married the respondent on 10.12.1981. It is alleged that a son is born in the wedlock between the petitioner and the respondent and now the son has attained the age of 35 years. However, the respondent disputes the paternity of the son.

3. In the counter statement filed by the respondent before the learned Magistrate, he has disputed the marriage as well as the domestic relationship. A contention was raised that, since there is no domestic relationship between the

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petitioner and the respondent, the petitioner is not an aggrieved person as defined under Section 2(d) of the D.V. Act and hence the petition under the D.V. Act is not maintainable before the court below.

4. The petitioner filed C.M.P.No.2100/2022 at the court below to conduct the DNA test of the son of the petitioner. Presumably it has been filed to prove the domestic relationship between the petitioner and the respondent. The court below, after hearing both sides, dismissed the said petition as per Ext.P6 order. The said order is under challenge in this O.P. (Crl.).

5. I have heard Sri.Sarath.M.S., the learned counsel for the petitioner and Sri.Santhosh Mathew, the learned counsel for the respondent.

6. The learned counsel for the petitioner submitted that conduct of the DNA test is absolutely necessary to prove the case of the petitioner and her son is ready to undergo the test and, as such, the court below ought to have granted the prayer sought for.

7. Per contra, the learned counsel for the respondent submitted that the paternity or legitimacy of the son is not an issue to be decided in the D.V. proceedings pending before the court and hence the court below was absolutely justified in rejecting the prayer.

8. Ext.P1 is the copy of the petition in M.C.No.34/2020 on the file of the Judicial First Class Magistrate Court, Chittur. The reliefs sought are for protection order and monetary relief. Absolutely no relief has been sought in respect of the son of the petitioner. What is to be proved to maintain an application under the D.V.Act is that the petitioner is an aggrieved person and that there is domestic relationship between the petitioner and the respondent. The petitioner herein alleges that she is the legally wedded wife of the respondent and they have resided together as husband and wife in the shared household. It is up to the petitioner to substantiate the same by adducing necessary evidence. Even if the DNA test is conducted and paternity is proved, that would not help the petitioner to prove the so-called marriage or domestic relationship. No doubt, in appropriate case, the court can order DNA test. However, it is

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settled that, strong prima facie case is to be made out to compel a person to undergo DNA test and the DNA test must be relevant to decide the fact in issue in a particular case. As stated already, the paternity or legitimacy of the son is not at all a fact in issue in the proceedings initiated by the petitioner against the respondent at the court below. The marriage as well as the domestic relationship can be proved by adducing other piece of evidence.

9. Even though the learned counsel for the petitioner submitted that the petitioner's son is prepared to undergo DNA test, the son of the petitioner is not before us. That apart, the respondent is not willing to undergo DNA test. Without sufficient reason, no court can compel the respondent to undergo DNA test. The learned counsel for the respondent also brought to my notice that in an earlier round of litigation between the petitioner, the respondent and the son of the petitioner, the son admitted that the respondent herein is not his father and a joint compromise petition was filed to that effect.

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For the reasons stated above, I am of the view that the court below was absolutely justified in rejecting the prayer of the petitioner to conduct DNA test. The O.P.(Crl.) is dismissed.

Sd/-

**DR.KAUSER EDAPPAGATH,
JUDGE**

skj

APPENDIX OF OP(CRL.) 305/2022

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE M.C. NO.34/2020 DATED
NIL ON THE FILE OF JUDICIAL FIRST
CLASS MAGISTRATE COURT CHITTUR,
PALAKKAD FILED BY THE PETITIONER
- Exhibit P2 TRUE COPY OF THE COUNTER IN M.C.
NO.34/2020 ON THE FILE OF JUDICIAL
FIRST CLASS MAGISTRATE COURT CHITTUR,
PALAKKAD DATED 25.5.2022 FILED BY THE
RESPONDENT
- Exhibit P3 TRUE COPY OF THE JUDGMENT DATED
28/3/2022 IN O.P. (CRIMINAL) NO.
162/2021 OF THIS COURT
- Exhibit P4 TRUE COPY OF THE C.M.P. NO.2100/2022
DATED 4/6/2022 IN M.C. NO.34/2020 ON
THE FILE OF JUDICIAL FIRST CLASS
MAGISTRATE COURT CHITTUR, PALAKKAD
- Exhibit P5 TRUE COPY OF THE COUNTER FILED TO THE
C.M.P. NO.2100/2022 DATED 4.6.2022
- Exhibit P6 TRUE COPY OF THE ORDER OF THE JUDICIAL
FIRST CLASS MAGISTRATE COURT CHITTUR,
PALAKKAD IN C.M.P. NO.2100/2022 IN
M.C. NO.34/2020 DATED 14/6/2022
- Exhibit P7 TRUE COPY OF THE I.A. NO.2/2022 IN
O.P. NO.281/2013 ON THE FILE OF FAMILY
COURT, PALAKKAD DATED 17.1.2022
- Exhibit P8 TRUE COPY OF THE I.A. NO.1/2022 IN
O.P. NO.281/2013 ON THE FILE OF FAMILY
COURT, PALAKKAD DATED 17.1.2022