
(2007) 03 MAD CK 0276
In the Madras High Court
Case No : Criminal R.C. No. 340 of 2005

G. Munivelu

APPELLANT

Vs

S. Masilamani and The State

RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 468
Registration of Births and Deaths Act, 1969 — Section 13(3), 15, 25, 8
Tamil Nadu Registration of Births and Deaths Rules, 2000 — Rule 11(6)

Citation : (2007) 03 MAD CK 0276

Hon'ble Judges : A.C. Arumugaperumal Adityan, J

Bench : Single Bench

Advocate : Kovai Ganesan, for the Appellant; A. Muthuraman, for R1 and V.R. Balasubramanian Additional Public Prosecutor for R2, for the Respondent

Final Decision : Dismissed

Judgement

A.C. Arumugaperumal Adityan, J.—This Revision has been preferred against the order passed in CrI.M.P. No. 2356 of 1998 in C.C. No. 902 of 1992 on the file of the Judicial Magistrate, Arakkonam.

2. CrI.M.P. No. 2356 of 1998 was filed by the petitioner-Munivelu to stay the operation of the order passed by the learned Judicial Magistrate, Arakkonam, in C.M.P. No. 1902 of 1998, which was filed u/s 13(3) of the Registration of Births and Deaths Act, 1969, (herein after referred to as "the Act"). The Petitioner in his petition would allege that the respondent-Masilamani on the basis of fabricated and concocted document obtained an order of registration of his birth in C.M.P. No. 1902 of 1998, thereby respondent-Masilamani has committed an offence u/s 468 IPC. The learned Judicial Magistrate has dismissed C.M.P. No. 2356 of 1998 preferred by the petitioner-Munivelu on the ground that an order has already been passed u/s 13(3) of the Act in C.M.P. No. 1902 of 1998 and there was no document produced by the petitioner to show that by producing fabricated and concocted document an order has been obtained in C.M.P. No.

1902 of 1998 and the Judicial Magistrate has observed that if at all the petitioner wants to challenge the order passed by him (Judicial Magistrate, Arakkonam), in C.M.P. No. 1902 of 1998, the petitioner has to prefer an appeal or revision before the appropriate forum basing his reliance on a dictum in 1992 LW (Crl) 16 (Velu v. Malthi w/o. Shanmugam) the learned Judicial Magistrate has dismissed C.M.P. No. 2356 of 1998. Against the said order of dismissal, this revision has been filed.

3. When the revision was taken up for hearing, the learned Counsel Mr. A.Muthuraman appearing for the revision petitioner fairly conceded that the remedy open to the revision petitioner is to challenge the order passed by the learned Judicial Magistrate, Arakkonam, in C.M.P. No. 1902 of 1998 before the appropriate forum and not to file a petition to stay or cancel the order passed in C.M.P. No. 1902 of 1998 before the same Magistrate. The relevant observation in the above cited ratio decidendi pointed out by the learned Counsel appearing for the revision petitioner runs as follows:

No particular procedure is prescribed either under the Act or the Rules, regarding the manner in which the Judicial Magistrate is to verify correctness of the birth or death. The very fact that no particular procedure is prescribed for this verification would imply, that all that the Judicial Magistrate is concerned with u/s 13(3) of the Act is, verification of the correctness of the birth or death. Sub-Section(3) as it stands, does not contemplate the learned Magistrate to verify the correctness of the date of birth or death or to hold an enquiry in the event of a dispute over the exact date of death or birth. The verification has to relate only to the correctness of the fact of birth or death. In other words, the learned Magistrate will have to be satisfied, that the birth or death had in fact taken place. Deciding the exact date of death or birth in the case of a dispute regarding the date, is beyond the scope of Section 13(3). As stated earlier, information which the persons mentioned in Section 8 are bound to give for registration of the birth or death, could be based on their knowledge or even belief. If after verifying, the learned Magistrate is not satisfied that the birth or death had really taken place, he should refuse to issue an order to register. If, however, he is satisfied that the birth or death as the case might be, had occurred, he has to order registration. He is not concerned with the exact date of birth or death. He has to register as required by the applicant and leave the aggrieved parties, if any, to seek remedy in the civil forum or any other appropriate forum. The object of the Act is only to make available, population data for planing purposes. Indeed, if the registration is made contemporaneous to the birth or death, the evidentiary value of the date of birth or death, would be considerable and would even be conclusive. This however, is only a consequence that incidentally flows from the registration, the main object still being, registering the fact of birth or death.

The learned Counsel for the revision petitioner would draw the attention of this Court to Section 15 of the Act, which runs as follows:

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.

The learned Counsel would also relied on Rule 11(6) of the Tamil Nadu Registration of Births and Deaths Rules, 2000, which runs as follows:

Correction or cancellation of entry in the register of births and deaths u/s 15-

(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(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 made a report giving necessary details to the officer authorised by the Chief Registrar by general or special order in this behalf u/s 25 and on hearing from him take necessary action in the matter.

So from the above said provisions of law, it is clear that the Registrar who registers the date of birth and death of a person is empowered to make changes in the entry of the register of birth or death if it is proved that the information, based on which the said entry has been made in the said register, has been made fraudulently, then he can correct the said entry of register of birth or death. But in the case on hand there was no entry made in the register of birth maintained by the Registrar, that is why the petitioner in C.M.P. No. 1902 of 1998 has approached the learned Judicial Magistrate for registering the date of birth. After following the formalities like publication and after recording the sworn statement of the petitioner, the learned Judicial Magistrate has passed an order in C.M.P. No. 1902 of 1998 for registering his date of birth. The said order of the Judicial Magistrate can only be agitated before the civil forum as observed by the learned judge of this Court in 1992 LW (CrI) 16 (Velu v. Malthi w/o. Shanmugam) cited above. Under such circumstances, I do not find any merit in this revision. Point is answered accordingly.

4. In the result, the Criminal Revision Petition is dismissed confirming the order passed in CrI.M.P. No. 2356 of 1998 in C.C. No. 902 of 1992 on the file of the learned Judicial Magistrate, Arakkonam. This Court records its appreciation for the fairness of the learned Counsel Mr. Kovai Ganesan in producing the above said citation, which is against his claim.