

**(2003) 08 KAR CK 0102**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 18540 of 2002**

Smt. Devamma

APPELLANT

Vs

Registrar of Births and Deaths

RESPONDENT

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**Date of Decision :** 06-08-2003

**Acts Referred:**

Registration of Births and Deaths Act, 1969 — Section 10, 13 (3), 31, 8  
Registration of Births and Deaths Rules, 1970 — Rule 7

**Citation :** AIR 2004 Kar 221 : (2003) ILR (Kar) 4787 : (2003) 4 KCCR 3145

**Hon'ble Judges :** D.V. Shylendra Kumar, J

**Bench :** Single Bench

**Advocate :** Sarat Chandra Bijai, for the Appellant; B.P. Puttasiddaiah, Govt. Pleader, for the Respondent

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## Judgement

Shylendra Kumar, J.—Petitioner has approached this Court praying for quashing of the order dated 10th January 2002 in C.Mis. 339/01 passed by the JMFC (II Court), Mysore, having failed in her attempt to get a death certificate in respect of her husband which is to be issued by the authorities under the Registration of Births and Deaths Act pursuant to registration of the date of death of a person. The requirement of registration of the date of death itself having not been fulfilled, as the request to this effect before the Magistrate for an order in this regard was declined on the ground that the petitioner's husband having died on 9.6.1962, much prior to The Registration of Births and Deaths Act, 1969 having come into force and under which the Magistrate functions, the petition was ordered as not maintainable. It is under such circumstances the petitioner has approached this Court.

2. According to the petitioner, she is the wife of one Sanjeevaiah and they were residents of Mysore City and that her husband died on 9.6.1962 at Mysore. The petitioner wanted to have the khatha in respect of the properties which were in the name of her husband transferred to her name and it was at that time she was required to produce a death certificate evidencing the factum of the death of

her husband. It was at this point of time that the petitioner faced difficulties.

3. Under the provisions of The Registration of Births and Deaths Act, 1969 ("the Act" for short), particularly Section 8 of the Act, intimation of birth and death is required to be furnished to the Registrar of Births and Deaths with particulars as indicated in this Section. Section 8 of the Act reads as under -

"8(1) It shall be the duty of the persons specified below to give or cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under Sub-section (1) of Section 16 -

a) In respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in Clauses (b) to (e), the head of the house or, in case more than one household live in the house, the head of the household, the head being the person, who is so recognized by the house or the household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;

b) In respect of births and deaths in a hospital, health center, maternity or nursing home or other like institution, the medical officer in charge or any person authorized by him in this behalf;

c) In respect of births and deaths in a jail, the jailor in charge;

d) In respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;

e) In respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere;

Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;

f) in any other place, such person as may be prescribed"

4. Intimation of death u/s 10 is required to be furnished by the person responsible within a period of seven days from the date of death as per Rule 7 of the Registration of Births and Deaths Rules ("the Rules" for short) and as provided u/s 10 of the Act, in respect of intimation which is beyond a period of seven days and upto 30 days it can be registered on payment of prescribed late fee. If the intimation is beyond 30 days and within one year, it shall be registered only with the written permission of the prescribed authority and on payment of prescribed fee and on production of an affidavit made before a Notary Public or

other officer authorized in this behalf. If the intimation is beyond one year from the date of occurrence of birth or death, it shall be registered only with an order made by a Magistrate of First Class or a Presidency Magistrate after verifying the correctness of the birth or death and on payment of prescribed fee.

5. In the instant case, the intimation being much beyond the period of one year, the petitioner filed an application before the Magistrate for an order, which could enable the Registering Authority to register the date of death and issue a certificate in this regard.

However, the learned Magistrate being of the view that the person having died even prior to the date of the Act itself coming into force, the petition was not maintainable and has accordingly dismissed the petition itself.

7. Sri Sarat Chandra Bijai, learned Counsel appearing for the petitioner submits that the order passed by the Magistrate is not in consonance with the provisions of the Act, that the Magistrate has misread and misunderstood the provisions of Section 13(3) of the Act; that the Registration of Births and Deaths Act, 1969 is the only legislation which holds the field as of now in respect of issue of certificates evidencing the factum of a birth or death under this Act and the question of rejecting a request for recording the date of death and issuing a certificate in this regard does not arise at all.

8. Before the coming into force of this Act, there was The Births, Deaths and Marriages Registration Act 1886 which held the field. Though u/s 29 of the present Act it is said that the provisions of this Act shall be construed not to be in derogation of the provisions of The Births, Deaths and Marriages Registration Act, 1886, the provision relating to repeal and saving which is u/s 37 of this Act indicates that subject to the provisions of Section 29 of the Act, after coming into force of this Act, any law in force therein as relates to the matter covered by this Act shall stand repealed in such State or Part, as the case may be. The effect of such repeal is that part of 1886 Act which is now covered by the provisions of the present Act, stand repealed. If there are other provisions made in 1886 Act which are not covered under the present Act, they continue to remain in force. In so far as the provisions relating to registration of births and deaths, they are contained in Section 8 of the present Act. (The Registration of Births & Deaths Act, 1969), which reads as under:-

"8(1) It shall be the duty of the persons specified below to give a cause to be given, either orally or in writing, according to the best of their knowledge and belief, within such time as may be prescribed, information to the Registrar of the several particulars required to be entered in the forms prescribed by the State Government under Sub-section (1) of Section 16 -

a) in respect of births and deaths in a house, whether residential or non-residential, not being any place referred to in Clauses (b) to (e), the head of the house or, in case more than one household live in the house, the head of the household, the head being the person, who is so recognized by the house or the

household, and if he is not present in the house at any time during the period within which the birth or death has to be reported, the nearest relative of the head present in the house, and in the absence of any such person, the oldest adult male person present therein during the said period;

b) in respect of births and deaths in a hospital, health center, maternity or nursing home or other like institution, the medical officer in charge or any person authorized by him in this behalf;

c) in respect of births and deaths in a jail, the jailor in charge;

d) in respect of births and deaths in a choultry, chattram, hostel, dharmasala, boarding-house, lodging-house, tavern, barrack, toddy shop or place of public resort, the person in charge thereof;

e) in respect of any new-born child or dead body found deserted in a public place, the headman or other corresponding officer of the village in the case of a village and the officer in charge of the local police station elsewhere;

Provided that any person who finds such child or dead body, or in whose charge such child or dead body may be placed, shall notify such fact to the headman or officer aforesaid;

f) In any other place, such person as may be prescribed.

2) Notwithstanding anything contained in Sub-section (1), the State Government, having regard to the conditions obtained in a registration division, may by order require that for such period as may be specified in the order, any person specified by the State Government by designation in this behalf, shall give or cause to be given information regarding births and deaths in a house referred to in Clause (a) of Sub-section (1) instead of the persons specified in that clause."

9. The responsibility of providing the intimation being cast on persons and the period within which it is so intimated is u/s 10 read with Rule 7 and the manner of dealing with intimations leading to delayed registration of births and deaths are governed by Section 13 of the present Act. Sub-section 3 of Section 13 governs a situation where the factum of birth or a death which has not been registered within one year of its occurrence and it can be registered only on an order made by Magistrate of First Class etc, and on payment of prescribed fee. Even when this Act came into force, the situations of the nature contemplated in subsection 3 of Section 13 were in existence. Obviously the provisions of Sub-section 3 of Section 13 took care of such situations. That only means that the provisions of Section 13(3) governed even situations of the nature where death or birth had taken place before the provisions of this Act came into force. This apart, as situations of the nature referred to in Sub-section 3 of Section 13 being now governed only by this provision and as this provision requires that it can be done only on an order passed by a Magistrate, it is incumbent upon the Magistrate to consider the application made u/s 13(3) and pass an order after verification of the correctness of the same. The question of the Magistrate

holding that a petition of this nature is not maintainable because it relates to an incident prior to the date of the Act coming into force, such situations have been expressly taken care of and are governed by the provisions of Section 13(3) of the Act.

10. The whole object of the Act is to ensure that there is a record of births and deaths and duly maintained by a public authority appointed for such purpose and a certificate issued by such an authority evidences the factum of such birth and death. Any Interpretation on the provisions of this Act should be to achieve the object of this Act and not to defeat the object of this Act. The provisions of this Act cannot be understood so as to prove about a situation where no certificate can be issued, a certificate in respect of an event that in fact has occurred, but may be prior to the Act came into force.

11. On a conjoint reading of the provisions of the 1886 Act and the provisions of the present Act, particularly in the light of Section 29 and 31 of the present Act, it has to be held that an application before the Magistrate for the purpose of passing an order to enable the Registering Authority to record a birth or death that had taken place beyond the period of one year from the date of intimation should necessarily be entertained and should be ordered.

12. In the circumstances, the order impugned is quashed. The matter is remanded to the file of the J.M.F.C. If Court. Mysore and the learned Magistrate is directed to proceed with the matter and pass appropriate orders on the merits of the petition.

13. Rule issued and made absolute.