

CrI.O.P.No. 29464 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 14.11.2025

CORAM:

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

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1.S.Prasanna,
S/o Sekaran aged about 39 years,
Old No.4/43A, New No.193,
Madha Koil Street, Ponnai,
Vellore-632 514.

2.S.Angelin Priscilla,
W/o S.Prasanna, aged about 41 years,
Old No.4/43A, New No.193,
Madha Koil Street, Ponnai,
Vellore-632 514.

... Petitioners

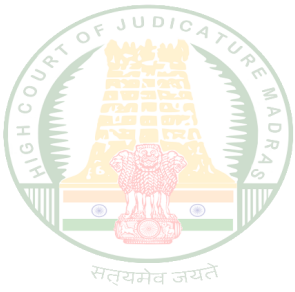
Vs.

M.Jothika, W/o B.Manoj Kumar,
No.52/B, Subramani Street,
Near Ponnurangam High School,
Vasanthapuram, Vellore-632 001.

... Respondent(s)

PRAYER : Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, to set aside the docket order dated 26.09.2025 passed in O.P.SR.No.4669 of 2025 on the file of the Judicial Magistrate, Katpadi to number the petition and dispose of the same on merits and in accordance with law.

For Petitioners : Mr.N.Senthilkumar



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ORDER

Challenging the order returning the petition filed in O.P.SR.No.4669 of 2025 on the file of the Judicial Magistrate, Katpadi, dated 26.09.2025, this criminal original petition has been filed.

2.The facts in brief:

i. The petitioners, who are intending parents, have filed a petition in O.P.SR.No.4669 of 2025 under Section 4(iii)(a)(II) of The Surrogacy (Regulation) Act, 2021, (hereinafter referred to as 'the Act') before the Judicial Magistrate, Katpadi.

ii. The petitioners, who are legally wedded couples and unable to beget a child, had consulted Dr.Priya Selvaraj, who is an expert in fertility treatment and were advised to undergo surrogacy procedure owing to the 2nd petitioner suffering from primary infertility.

iii. The respondent, who is the younger sister of the 2nd petitioner, had given her consent and willingness to carry the child of the petitioners as a surrogate mother. The respondent had married one B.Manojkumar, on 09.10.2017 and out of their wedlock, they have two children viz., daughter-Deepika and son-Majesh Kumar. The petitioners and respondent had entered into an agreement for surrogacy wherein, the consent and the



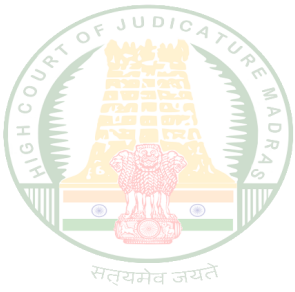
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medical fitness certificate of the respondent i.e., intending surrogate mother

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iv. The surrogacy procedure was to be carried out at G.G.Hospital, 6E Nungambakkam High Road, Dr.Thirumurthy Nagar, Nungambakkam, Chennai-600 034. The petitioners and the respondent have enclosed the requisite documents under the Act. The petitioners have also contended that the present surrogacy is altruistic in nature, without any commercial agreement and in compliance of Section 3(ii) of the Act and accordingly, the petitioners had filed a petition seeking an order for grant of parentage and custody of the child born through the respondent as a surrogate mother and sought for an approval of the intended surrogacy.

v. Subsequent to several returns made by the learned Judicial Magistrate, Katpadi, and consequent representations made by the petitioners, the learned Judicial Magistrate, on 26.09.2025, had finally returned the petition on the ground that the Court had no jurisdiction to entertain the petition in the light of the order of the Supreme Court in *ARUN MUTHUVEL VS. UNION OF INDIA (Writ Petition (Civil) No.756 of 2022 and connected cases dated 05.02.2024*. Challenging the said order of return, the present Criminal Original Petition has been filed.



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3. The learned counsel appearing for the petitioner would submit

that rejection order is contrary to the provisions envisaged under Section 4(iii)(a)(II) of the Act and the petition is not one of civil nature but merely a statutory proceeding requiring judicial approval in aid of a lawful medical procedure. He would further submit that the judgment of the Supreme Court, based on which the learned Magistrate has returned the petition, will not be applicable to the facts of the present case and the Court has jurisdiction to pass orders if the petitioners and the proposed surrogate mother complies with the provisions envisaged under Section 4(iii)(a)(II) of the Act.

4. Heard the learned counsel appearing for the petitioner and perused the records.

5. For better appreciation, it is relevant to extract Chapter III Rule 4(iii)(a)(II) of the Surrogacy (Regulation) Act, 2021:

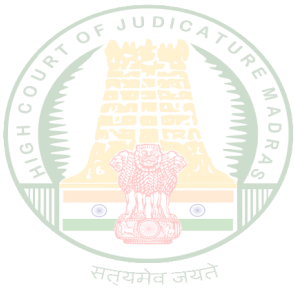
"CHAPTER III

REGULATION OF SURROGACY AND SURROGACY PROCEDURES

4. Regulation of surrogacy and surrogacy procedures:

...

4(iii)(a)(II) - "an order concerning the parentage and custody of the child to be born through surrogacy, has been passed by a



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Court of the Magistrate of the first class or above on an application made by the intending couple or the intending woman and the surrogate mother, which shall be the birth affidavit after the surrogate child is born.”

6. One of the requirement is that the Court of Magistrate of the first class or above has to pass an order concerning the parentage and custody of the child to be born through surrogacy on an application made by the intending couple or the intending woman and the surrogate mother, which shall be the birth affidavit after the surrogate child is born. The Act is very clear that the order has to be passed by the Court of Magistrate of first class or above, thereby the order has to be necessarily passed by the jurisdictional Judicial Magistrate, whereas in the present case, the Judicial Magistrate had returned the petition citing lack of jurisdiction.

7. Notably, the Act is a beneficial legislation enacted with the primary object of regulating surrogacy in India and more importantly, addressing the growing problem of infertility among young couples. The Act seeks to provide a legally structured, ethical and medically safe pathway for childless couples to experience parenthood wherein the role of the judiciary assumes great importance. A petition filed under this Act must not be dealt with as though it is a routine application and Courts must keep in



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mind that these are matters touching upon one of the deepest aspirations of human life, the desire of childless couples to have a child.

8. The judicial officers are therefore expected to approach such petitions with sensitivity, responsibility and compassion ensuring that the statutory safeguards under the Act are complied with, without frustrating the beneficial objective of the legislation. The learned Judicial Magistrate, Katpadi, without properly looking into the provisions of the Act, has returned the petition erroneously by placing reliance on the interim order passed by the Apex Court in *ARUN MUTHUVEL VS. UNION OF INDIA (Writ Petition (Civil) No.756 of 2022 and connected cases on 05.02.2024* cited *supra*, in and by which, couples who had approached the Supreme Court with regard to exemption in the age criteria were directed to approach their respective jurisdictional High Courts for mere ease of access of justice, which is not at all applicable to the facts of the present case.

9. Further, it is seen that the learned Magistrate had repeatedly, without understanding the sensitivity involved in this case, had returned the petition on several occasions thereby, frustrating the parties and acting contrary to the intent of the beneficial legislation. As discussed *supra*, the order passed by the Apex Court cited *supra* by the learned Magistrate is not applicable to the facts of the present case. Even, in the very same case, the



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final order passed by the Apex Court on 09.10.2025 is to the effect that the

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age restrictions cannot be applied for the couples who started surrogacy procedures before the 2021 Act and as stated above is also not applicable to the present case of the petitioners. In the present case, the intending couples/petitioners sought an order to have parentage and custody of the child born through the respondent/surrogate mother and an order of approval of surrogacy, which is permissible in law.

10. In view of the discussion, the impugned order is set aside and the matter is remitted back to the learned Judicial Magistrate, Katpadi, with a direction to number the petition in O.P.SR.No.4669 of 2025, take it on file and conduct an enquiry and pass appropriate orders in accordance with law within a period of two weeks from the date of receipt of a copy of this order.

11. With the above directions, this Criminal Original Petition stands allowed.

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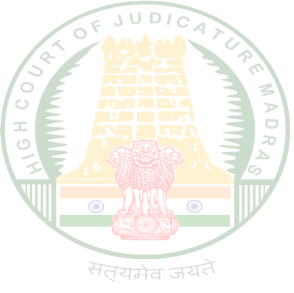
Note:1. Issue order copy today (14.11.2025)

2.Registry is directed to return the original petition(filed before the lower court) and returned papers to the learned counsel for the petitioners.

Neutral Citation:Yes/No

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A.D.JAGADISH CHANDIRA, J.

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To

The Judicial Magistrate,
Katpadi.

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