

H.C.P. No. 3043 of 2014

P. Duraisamy v. State

2017 SCC OnLine Mad 1361 : (2017) 3 CTC 23 : 2017 Cri LJ 3611 : (2017) 2 LW
550 : (2017) 1 LW (Cri) 709

In the High Court of Madras
(BEFORE S. NAGAMUTHU AND P.N. PRAKASH, JJ.)

H.C.P. No. 3043 of 2014:

P. Duraisamy Petitioner

v.

1. The State represented by the Secretary to Government Department of Home (Prison) Fort St. George Chennai 600 009
2. The Director General of Prison Department of Prison Egmore, Chennai - 600 008
3. The Superintendent of Prison Central Prison Cuddalore
4. The Inspector of Police Valathy Police Station Villupuram District
5. The Commissioner Vellore City Municipal Corporation Vellore
6. The Secretary to Government Home Department St. Fort George Chennai 600 009
7. The Secretary to Government Health & Family Welfare Department St. Fort George Chennai
8. The Secretary to Government Commercial Taxes & Registration Department St. Fort George Chennai
9. The Secretary to Government Revenue Department St. Fort George Chennai
10. The Secretary to Government Rural Development Department St. Fort George Chennai
11. The Secretary Department of Law St. Fort George Chennai
12. The Secretary to Government Municipal Administration and Local Bodies St. Fort George Chennai
13. The Inspector General of Registration Government of Tamil Nadu Santhome Chennai
14. The Commissioner Municipal Administration and Local Bodies Ezhilagam, Chennai
15. The Commissioner Town Panchayats Kuralagam Chennai
16. The Registrar General High Court of Madras
(R5 impleaded vide order dated 18.03.2015 in HCP No. 3043 of 2014)
(RR 6 to 16 impleaded vide order dated 24.06.2016 in HCP No. 3043 of 2014)
17. The Secretary - Law Union Territory Puducherry
(R17 impleaded vide order dated 05.07.2016 in HCP No. 3043 of 2014) Respondents

With

W.P. (MD) No. 420 of 2017:

Thoothai Muniyasamy Petitioner

v.

The Principal Secretary to Government Government of Tamil Nadu
Department of Health & Family Welfare Secretariat Chennai
Respondent

And

CrI. O.P. (MD) No. 3868 of 2016:

R. Balkani Petitioner

v.

1. The Superintendent of Police Virudhunagar District
Virudhunagar
2. The Station House Officer Mamsapuram Police Station
Mamsapuram Srivilliputhur Taluk Virudhunagar District
3. Thangam @ Thangaraj
4. Shanmugam Pillai
5. Balasubramanian
6. Perumal
7. Kandaiah Thevar Respondents

H.C.P. No. 3043 of 2014,
W.P. (MD) No. 420 of 2017

&

W.M.P. (MD) No. 334 of 2017

&

CrI. O.P. (MD) No. 3868 of 2016

Decided on April 13, 2017, [Reserved On: 24.02.2017]

For petitioner in HCP No. 3043 of 2014 Mr. Ilayaraja Kandasamy

For petitioner in WP (MD) No. 420/2016 Mr. M. Ravi for Mr. R.M. Arun Swaminathan

For RR 1-4 in HCP No. 3043 of 2014 Mr. R. Rajarathinam Public Prosecutor

For R5 in HCP No. 3043 of 2014 Ms. P. Shanthi

For RR 6 to 15 Mr. R. Muthukumarasamy Advocate General assisted by Mr. A.N.
Thambidurai Special Govt. Pleader

For R16 Mr. C.T. Mohan

For R17 Mr. M.R. Thangavelu A.P.P. (Pondy)

For respondent in WP (MD) No. 420/2017 Mr. A.N. Thambidurai Special Govt.
Pleader (W)

For petitioner in CrI OP (MD) No. 3868/2016 Mr. Dilip Kumar

For RR 1 & 2 in CrI.OP (MD) No. 3868/2016 Mr. R. Rajarathinam Public Prosecutor

Advocate Commissioner Mr. R. Mohandoss

Prayer in H.C.P. No. 3043 of 2014:

Petition filed under Article 226 of the Constitution of India seeking a writ of habeas corpus directing the respondents to produce the detenu D. Anbu, S/o P. Duraisamy, now confined at Central Prison, Cuddalore, before this Court and declare him as juvenile and set him at liberty.

W.P. (MD) No. 420 of 2017:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records pertaining to the respondents in G.O. (Ms.) No. 293,

Health and Family Welfare (AB2) Department dated 02.12.2016 and quash the same.

Prayer in CrI.O.P. (MD) No. 3868 of 2016:

Criminal Original Petition filed under Section 482, Cr.P.C. to issue a direction to the Judicial Magistrate No. II, Srivilliputhur, to initiate proceedings under Section 340 r/w 195 of Cr.P.C. in respect of the criminal offences committed by the accused in CrI.M.P. No. 5673 of 2012 and order for the said proceeding to be tried along with C.C. No. 244 of 2015 pending on the file of the Judicial Magistrate No. II, Srivilliputhur by ordering transfer to any other competent superior Court of Criminal law and to keep C.C. No. 244 of 2015 in abeyance till then and to issue a direction to the second respondent police to conduct further investigation in respect of Cr. No. 87 of 2014 and file an additional report to be taken cognizance by the concerned Court and tried along with C.C. No. 244 of 2015 in respect of the offences omitted to be investigated by the police authorities.

COMMON ORDER

P.N. PRAKASH, J.

"Text in vernacular"

[Thirukkural-Couplet 339]

Which means

"Death is sinking into slumbers deep;
Birth again is waking out of sleep."

[Translation by Rev.G.U. Pope]

1. Time is a vital dimension that stands between birth and death, but, in the meantime, how the two events, viz., birth and death, proprio vigore, have provided fodder for burgeoning litigations in the State, is the subject matter of the cases at hand.

H.C.P. No. 3043 of 2014:

2. One D. Anbu S/o. Ponnusamy is a life convict lodged in Central Prison, Cuddalore, who was convicted by the Additional Sessions Judge, Fast Track Court-II, Tindivanam, by judgement dated 24.07.2006. During trial, it was never claimed that Anbu was a juvenile in terms of the Juvenile Justice [Care and Protection] Act, 2000. Subsequently, on an application made to a Judicial Magistrate under Section 13(3) of The Registration of Births and Deaths Act, claiming that his birth was not registered, the learned Magistrate ordered to register his date of birth as "19.12.1988". Based on the same, a birth certificate was obtained on 24.09.2014 and placing reliance on the same, the petitioner, the father of Anbu has filed the present HCP No. 3043 of 2014 seeking to set Anbu at liberty by extending the benefit of the Juvenile Justice (Care and Protection) Act, 2000.

3. When this Habeas Corpus Petition came up for hearing on 20.01.2016 before a Division Bench consisting of Hon'ble Mr. Justice R. Sudhakar and Hon'ble Mr. Justice P.N. Prakash, having noticed similar claims made in several cases, passed the following order:

"The son of the Petitioner by name Anbu was convicted in S.C. No. 211 of 2005 on 24.7.2006 by the Additional District and Sessions Judge (Fast Track Court No. II), Tindivanam for the offences under Sections 452, 395, 396 and 397 IPC and has been sentenced to undergo life imprisonment and he is now undergoing the sentence.

2. In this Habeas Corpus Petition, it is the case of the petitioner that the actual date of birth of his son is 19.12.1988 and that he was a Juvenile as on 8.7.2004 when the alleged incident in S.C. No. 211 of 2005 took place, and therefore, he will be entitled to the relief under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. This Court directed the Additional District & Sessions Judge, Fast Track Court No. II, Tindivanam to enquire into the juvenility of the petitioner's son and report before this Court. The report of the learned Judge dated 14.10.2015 shows that the petitioner's son D. Anbu was 21 years old as on 8.7.2004. Therefore, by our order dated 16.12.2005, we rejected the ground of juvenility by accepting the report of the trial Court.

4. During the hearing of this case, we noticed that the petitioner had obtained a date of birth certificate from the Vellore City Municipal Corporation on 24.9.2014 showing the date of Birth of his son Anbu as 19.12.1988. On further enquiry, we learnt that the said date of birth certificate was issued by the Vellore Municipal Corporation based on the order dated 9.9.2014 in C.M.P. No. 2614 of 2014 passed by the learned Judicial Magistrate No. I, Vellore, on a petition filed by the petitioner under Section 13 (3) of the Registration of Births and Deaths Act, 1969 read with Tamil Nadu Registration of Births and Death Rules, 2000.

5. We called for the records in C.M.P. No. 2614 of 2014 from the Court of Judicial Magistrate No. I, Vellore and on perusal of the same, we were shocked to know that while Anbu was in jail, his father P. Duraisamy (petitioner herein) has filed an application before the Judicial Magistrate No. I, Vellore contending that his son was born on 19.12.1988 in his residence; that he had failed to register the same as required under the Rules with the authorities; and that, his son requires date of birth certificate now for the purpose of getting passport. Along with the application, a non-availability Certificate dated 11.6.2014 purportedly issued by the Vellore City Municipal Corporation was enclosed stating that a search has been made on the request of P. Duraisamy in the registration records for 19.12.1988 relating to the local area and it was found that the event relating to the birth of D. Anbu, Son of P. Duraisamy and D. Ramani was not registered. A sworn statement given by Duraisamy in support of his contention that his son Anbu was born on 19.12.1988, and that his birth was not registered with the Municipal Corporation has been filed along with copy of the ration card, which shows the names of the family members, in which Anbu's name figures. A paper publication seems to have been effected in vernacular paper - Nava India Times, Issue dated 28.8.2014, a copy of which has also been filed in the Court. Notice has been ordered in CMP No. 2614 of 2014 to the Vellore Municipal Corporation and since no one appeared on behalf of the Vellore Municipal Corporation and filed any objection, the Magistrate has passed the following order on 9.9.2014:

"The petitioner has filed an application u/s.13(3) of the Registration of Births and Deaths Act, 1969 for seeking an order for registration of birth of petitioner's son namely D. Anbu.

It was alleged in the petition that the petitioner's son namely D. ANBU birth on 19.12.1988 and to that effect. the petitioner has filed proof affidavit on his side. Even though notice was served on the respondent, he has not appeared. In this petition the paper publication was ordered and effected on 28.08.2014 in the Nava India Times daily news paper. and no one appeared on behalf of respondent and objections were not received. Hence this Court presumed that the petitioner's son namely D. ANBU birth on 19.12.1988.

In the result, the respondent hereby ordered to register the birth of petitioner's son name D. ANBU in accordance with the registration of Birth and Death Act, 1969, and the Tamil Nadu Registration of Births and Deaths Rules, 2000."

6. On reading the above order, we were really shocked about the cavalier manner in which the Magistrate has dealt with the case and issued a direction to the Vellore Municipal Corporation, based on which, the petitioner has set up the present claim

of juvenility for extricating his son from undergoing the life imprisonment imposed upon him by the Sessions Court.

7. A careful perusal of the records received from the Court of Judicial Magistrate No. 1, Vellore in C.M.P. No. 2614 of 2014 shows that there is no material to show that the Magistrate saw the claimant D. Anbu. There is no material to show that the Magistrate was aware of the criminal antecedents of the said Anbu. The Magistrate has accepted the ipse-dixit of Duraisamy/petitioner that a son was born to him on 19.12.1988; that he was named Anbu; that his birth was not registered; and that, Anbu now requires a birth certificate for the purpose of getting passport. The purpose in the present case is for claiming juvenility. The attempt by the father is to extricate the son from conviction.

8. We came across similar claims by others on the same fashion which aroused our suspicion. Therefore, we directed the Registrar (Judicial) to collect statistics from all the Judicial Magistrates in the State as to the number of applications filed and ordered under the Registration of Births and Deaths Act, 1969 for the period from 1.1.2014 to 30.9.2015. The Registrar (Judicial) produced the statistics called for by us and on perusal of the same, we were alarmed. We found that a total number of 4,13,751 applications have been ordered by various Magistrates in the State of Tamil Nadu for the period from 1.4.2014 to 30.9.2015. We were told that this includes Registration of deaths also. It may be appropriate to set down the statistics in respect of some of the districts:

Cuddalore	..	22,579
Pudukkottai	..	23,927
Ramanathapuram	..	24,777
Sivagangai	..	20,691
Thanjavur	..	25,092
Tiruchirapalli	..	20,800
Tirunelveli	..	32,893
Villupuram	..	25,865
Virudhunagar	..	23,689

9. Without fear of contradiction, we can take judicial notice of the fact that in the State of Tamil Nadu, the State has put in place a reasonable, viable and efficacious system for registration of births and deaths, at the grass root level. The Government Hospitals, mortuaries, graveyards, burial grounds, etc., have been made aware of the need to adhere to the mandates of the Registration of Births and Deaths Act, 1969, which is widely published in the Press and Media. Therefore, in our considered opinion, ordering 4,13,751 cases for registration of Births/Deaths by Magistrates in a period of one year and nine months, is indeed enormous and appalling. Apart from setting up a claim of juvenility in criminal cases, it is not uncommon for litigants to claim alteration of their date of retirement from service, based on such birth certificates, secured on flimsy and baseless pleas. Such claims by Government servants nags the State and foments litigation on the service side. Similarly, land-sharks obtain death certificates of living persons to effect fraudulent transfers of lands. These are a few instances of misuse of the judicial system. We smell a rat and it is time for us to crack the whip and set our house in order.

10. Section 13(3) of the Registration of Births and Deaths Act, 1969 reads as follows:

“13(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.”

By virtue of this provision, Magistrates have been conferred the power to conduct enquiry in cases where the birth or death has not been registered within the time stipulated by the Act, and after being satisfied about the truthfulness of the assertion of the party, issue a direction to the registering authority to register the same. There are no rules governing the manner in which the enquiry should be done. A method has been evolved, which is conventionally followed by the Magistrates while dealing with an application for registration and that has to be revisited.

11. In order to streamline the process and eliminate the possibilities of fraudulent claim, we are of the opinion that an Expert, who is well conversant with the Court procedures should be appointed to study the enquiry procedure adopted by Magistrates and suggest remedial measures. Therefore, we appoint Mr. R. Mohandoss, retired District Judge, J2-C, Krishna Emerald Heights, 4th Main Road, Jaichandran Nagar, Pallikaranai, Chennai - 600100, (Cell Phone No. 9443366150) as Commissioner and whose terms of reference are as follows:

- (i) Study the procedure adopted by Magistrates in the State for conducting enquiry under section 13(3) of the Registration of Births and Deaths Act, 1969;
- ii) Report about the possibilities and nature of misuse of the procedure;
- (iii) Suggest remedial measures and procedural guidelines for the Judicial Officers to follow;
- (iv) The report shall be submitted within a period of two months from the date of receipt of a copy of this order.

12. All the Judicial Officers in the State are directed to provide necessary information sought by the Commissioner and render assistance. The Commissioners of Corporations and Municipalities, Tahsildars, Revenue Officials, Registration Officials, and Panchayat Officials shall furnish the required information sought by the Commissioner. The Inspectors of Police of the concerned Police Station shall render necessary assistance to the Commissioner for conducting enquiries about the claims.

13. The State of Tamil Nadu is directed to pay a sum of Rs. 50,000/- (Rupees Fifty Thousand only) to the Commissioner as initial remuneration within a period of two weeks from the date of receipt of a copy of this order.

For filing report by the Commissioner, post the matter on 24.3.2016 before this Bench, since we are monitoring the case."

5. The report dated 10.06.2016 submitted by Mr. R. Mohandoss, retired District Judge and Advocate Commissioner, opened up a Pandora's box and cried for immediate judicial intervention to save the judicial system from ridicule.

6. From the aforesaid report, we understand that an ill-designed enquiry procedure has been mummified in all the Courts of Magistrates in the State for facilitating issuance of birth certificates for the unborn and death certificates for the living for the mere asking.

7. We will illustrate this with an example. Supposing "A" wants a date of birth certificate to the effect that he was born on 01.01.1970, he will first scout and find out which Magistrate is readily issuing the certificate without much ado. If he learns that the Metropolitan Magistrate in Chennai is very amiable, then, he will give a representation to the Commissioner, Corporation of Chennai, stating that his mother delivered him on 01.01.1970 in a Chennai address and ask for a birth certificate. The Corporation of Chennai will check their records and naturally, the birth would not have been entered in the register. So, they will issue a Non-Registration Certificate. Armed with the certificate, "A" will file a petition under Section 13(3) of the Registration of Births and Deaths Act, 1969 (for brevity "the RBD Act") read with Rule 9(2) of the

Tamil Nadu Registration of Births and Deaths Rules, 2000 (for brevity "the TNRBD Rules") arraying the Commissioner, Corporation of Chennai as a party respondent, before the Metropolitan Magistrate, Chennai. Invariably, the Commissioner, Corporation of Chennai, who is neither a contesting party nor has any interest in the lis, would remain ex parte. On the orders of the Magistrate, "A" will give a paper publication in a recondite vernacular newspaper to the effect that he was born on 01.01.1970 at the given address; that he has filed a petition before the said Magistrate; that the case is posted to a said date; and that if anyone has objection, he/she can appear before the Magistrate on the said date and file his/her objections. On the appointed date, the case will be called in the open Court. None will come up with any objection. The Magistrate will record the statement of "A" on oath and pass an order directing the Commissioner, Corporation of Chennai, to enter the date of birth of "A" as 01.01.1970 in the Births and Deaths Register. Thereafter, "A" will obtain a date of birth certificate to the effect that he was born on 01.01.1970.

8. Over a period of time, the legal fraternity has evolved "Birth and death jurisprudence" and some members have even carved out for themselves a monopolistic niche, in the Magistrate Courts and would allow none to venture into their territory. The Birth Certificates so obtained are mostly used for extending the date of superannuation or to set up claims of juvenility in criminal cases. Similarly, how such death certificates help one to set up civil claims is limpid from the facts of the case in Crl.O.P. 3868 of 2016, which we have set out in the later portion of this order.

9. It may be profitable to extract certain portions from the report dated 10.06.2016 of the Advocate Commissioner.

"5. Invariably in all the CMPs, the respondents namely the Commissioner of Corporation/Municipalities or the Tahsildar as the case may be, have remained ex parte. In none of the cases the respondents had appeared and contested the matter, nor even the would take pain to send a report with regard to the truthfulness or otherwise of the contention of the petitioners. Like that, in none of the cases, there was any objection from any quarters even after paper publication. As such, the Judicial Magistrates would contend that they had no other option except to allow the petition as they had no facility or paraphernalia to enquire and verify the correctness of the contention of the petitioner.

6 Majority of the Judicial Magistrates and Metropolitan Magistrates at Chennai would contend that they are being pressurized by the counsels concerned who appeared for the petitioners to pass orders expeditiously in the CMP without even allowing the Judicial Magistrates to apply their judicial knowledge, otherwise the Magistrates are being threatened with dire consequences. As such, they would contend that since the Act simply says only an order made by a Magistrate of the First Class or Presidency Magistrate after verifying the correctness of the birth or death and on payment of the prescribed fee, as there is no staff attached to the Judicial Magistrates or Metropolitan Magistrates to verify the correctness of the birth or death as contemplated in Section 3(3) of the Registration of Births and Deaths Act, 1969, all the Judicial Magistrates and Metropolitan Magistrates would contend that the rule framed under the Act by the Government of Tamil Nadu, it had been falsely framed as Judicial Magistrate in Rule 9(3), while the Act itself is silent in this regard. As such, they would contend that the Magistrate of the First Class or the Presidency Magistrate as referred in Section 13(3) of the Registration of Births and Deaths Act, 1969 would refer only to the Executive Magistrates and hence, if the rule framed under Rule 9(3) is amended, accordingly, it would vest the jurisdiction only to the Executive Magistrates and not to the Judicial Magistrate. Further, they would contend that when the Judicial Magistrates and the Metropolitan Magistrates are overburdened with the existing other judicial works, they find it very difficult to

conduct the roving enquiry under section 13(3) of the Registration of Births and Deaths Act, 1969, to complete the proceedings that too under the tremendous pressure of the counsels, when the Registering Authority, viz., the Commissioner of Corporations/Municipality/Tahsildar, as the case may be, are not evincing any interest to contest the matter or at least send any report.

7 When I visited various districts, I have also informed to the respective Bar Associations to come forward with any suggestions in this regard. But none of the Bar Associations had sent any suggestions to me while only one Senior Counsel, Mr. S. Jaffer Ali of Tirunelveli, had sent a representation in this regard. This counsel had also interpreted the word "Magistrate of the First Class" or the "Presidency of the Magistrate" as referred to in Section 13(3) of the Registration of Births and Deaths Act, 1969, only refers to the Executive Magistrates as per the provision of the Cr.P.C. and he would further contend that the State Government had wrongly construed as Judicial Magistrate of First Class and wrongly framed the Rule 9(3).

15. During the interaction meeting with the Magistrates, officers of the Tiruvallur District, the Magistrate of Pallipattu which is in the bordering Taluk would contend that majority of the births took place in Andhra Pradesh as the girl belonging to Andhra Pradesh and usually, she would have gone to her parental home at Andhra Pradesh for first delivery definitely the birth would have been registered there at Andhra Pradesh. But for the convenience of the petitioners for the purpose of getting school admission and employment purpose, the petitioners would choose their convenient place and would choose the convenient date of birth and will come forward with a petition under Section 13(3) of the Registration of Births and Deaths Act, 1969 by choosing the jurisdiction of the local court."

10. We were curious to know about the procedure obtaining in the neighbouring Union Territory of Puducherry and so, we ordered notice to the Government Pleader, Puducherry.

11. Mr. M.R. Thangavel, learned Government Pleader, Puducherry, informed us that in the Union Territory of Puducherry, orders under Section 13(3) of the RBD Act are passed by the Executive Magistrates and not by Judicial Magistrates, as in the State of Tamil Nadu.

12. At this juncture, it may be necessary to extract the relevant legal provisions.

13. Section 13(2) and (3) of the RBD Act reads as under:

"13 Delayed registration of births and deaths:

(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."

12.2. Rule 10(3) of the Tamil Nadu Regulations of Births and Deaths Rules, 1977 (which has been repealed in 2000) reads as under:

"10. Authority for delayed registration and fee payable thereof:

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

12.3 Rule 9(3) of the TNRBD Rules, 2000, reads as under:

"9. Authority for delayed registration and fee payable thereof under Section 13:

(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 Judicial Magistrate or a Metropolitan Magistrate and on payment of a late fee of rupees ten.

12.4 Rule 11(3) of the Pondicherry Registration of Births and Deaths Rules, 1978, reads thus:

"11 Authority for delayed registration and fee payable therefor under Section 13:

(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 fifteen."

12.5 G.O. Ms. No. 191/LAD, Local Administration Department dated 29.08.1983 (for brevity "G.O. Ms. No. 191") reads as under:

"GOVERNMENT OF PONDICHERRY
(Abstract)

Registration of Births and Deaths Act, 1969 - Powers of Magistrates under Section 13(3) - Executive Magistrates to exercise the power - Orders - Issued.

- - - - -

LOCAL ADMINISTRATION DEPARTMENT

G.O. Ms. No. 191/LAD

Pondicherry, the 29-8-1983

The following order shall be published in an Extra-ordinary Gazette, immediately:

ORDER

According to sub-section (3) of Section 13 of the Registration of Births and Deaths Act, 1969, 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 after verifying the occurrence of the birth and death and on payment of the prescribed fee. The Government of India have clarified that the powers to order belated registration under the said sub-section can be exercised by the Executive Magistrate of the First Class. The question of entrusting the functions under the said sub-section to the Executive Magistrates in respect of different regions of this Union Territory has been under consideration. The Lieutenant-Governor has been pleased to direct the Executive Magistrates specified in column 2 of the Table below shall exercise the powers conferred on and perform the functions imposed upon the Magistrate of the First Class under the said section in respect of the area mentioned against each in column 3 of the said table.

TABLE

Sl. No.	Designation	Area
1	Sub-Divisional Magistrate-cum-Sub/Deputy Collector (Revenue), Pondicherry	Whole of Pondicherry region
2	Sub/Deputy Collector (Revenue)-cum-Executive Magistrate, Karaikal	Whole of Karaikal region
3	Sub-Divisional Magistrate-cum-Sub Deputy Collector (Revenue), Mahe	Whole of Mahe region
4	Sub-Divisional Magistrate-cum-Sub/Deputy Collector (Revenue)	Whole of Yanam region

(By order of the Lieutenant-Governor)"

14. From a bare reading of the above legal provisions, it is evident that on account of Rule 9(3) of the TNRBD Rules, Judicial Magistrates/Metropolitan Magistrates were enjoined to entertain petitions under Section 13(3) of the RBD Act, whereas, in Puducherry, the Government has invested powers with the Executive Magistrates to deal with the same.

15. When this was brought to the notice of the learned Advocate General of the State of Tamil Nadu, he took time to consult the Government and reverted to us with G.O. (Ms) No. 293 dated 02.12.2016 which has been gazetted in Part III - Section 1 (a), Page 28 Issue No. 4 on 25.01.2017, the relevant portion of which reads as follows:

NOTIFICATION

16. In exercise of the powers conferred by section 30 of the Registration of Births and Deaths Act, 1969 (Central Act 18 of 1969), the Governor Tamil Nadu, with the approval of the Central Government, hereby makes the following amendment to the Tamil Nadu Registration of Births and Deaths Rules, 2000.

AMENDMENT

17. In the said Rules, in Rule 9, for sub-rule (3), the following sub-rule shall be substituted, namely:

"(3) Any birth or death which has not been registered within one year of its occurrence shall be registered by an order of the Executive Magistrate not below the rank of a Revenue Divisional Officer."

W.P. (MD) No. 420 of 2017:

18. After the above GO was issued by the Government amending the Tamil Nadu Registration of Births and Deaths Rules 2000, the petitioner in W.P. (MD) 420 of 2017 has filed the said writ petition challenging the validity of the said amended rule. Since the issue is interlinked with the issue involved in the HCP on the orders of the Hon'ble Chief Justice, the said writ petition was withdrawn from the Madurai Bench of this Court and listed before us. We heard the said writ petition also along with the habeas corpus petition referred to above.

19. The learned counsel for the writ petitioner submitted that G.O. (Ms.) No. 293 is in violation of Section 13(3) of the RBD Act inasmuch as the RBD Act empowers Magistrates of the First Class or the Presidency Magistrates to entertain a petition under Section 13(3) and not the Executive Magistrates. He further contended that as against the order of the Executive Magistrate, the RBD Act has not provided any appeal, whereas, against the order of a Judicial Magistrate, the aggrieved person can file a revision application under Section 397, Cr.P.C.

20. The learned Advocate General refuted the submissions and justified the order impugned in the writ petition by contending that an order under Section 13(3) of the RBD Act can be passed only by the Executive Magistrate, inasmuch as it does not require any adjudicatory function, but, requires only an inquisitorial enquiry in order to find out the correctness of the assertion made by the claimant. He also contended that absence of an appellate remedy cannot be a reason to declare that the law is bad.

21. This Court gave its anxious consideration to the rival submissions.

22. After the Parliament passed the RBD Act, several State Governments sought clarifications from the Central Government. The clarifications that were sought by the State Governments and clarifications given by the Central Government have been set down in the Hand Book on Civil Registration in Kerala issued by the office of the Chief Registrar, Kerala, Department of Panchayats, Thiruvananthapuram, wherein, in response to query 48 raised by the West Bengal Government, the Central Government has given the following clarification:

“Clarification:

Sub-section (3) of Section 13 of the RBD Act, 1969 provides that in case of delay of registration of birth and death beyond one year of its occurrence, the same shall be registered only on an order made by a Magistrate of the First Class or a Presidency Magistrate after verifying the corrections of birth or death and on payment of prescribed fee.

This function of verifying the corrections may involve the appreciation or sifting of evidence or the formulation of a decision but that decision will not expose to any punishment or penalty or will not have the effect of sending any person for a trial so as to bring this function within the meaning of clause (a) of sub-section (4) of section 3 of the Cr.P.C. 1973. At the most, it may be said to be quasi judicial function. Under the RBD Act, 1969, the function under Section 13(3) of the said Act is treated as administrative or executive in nature. Clause (b) of sub-section (4) of Section 3 of Cr.P.C. 1973 provides that the functions which are administrative or executive in nature exercisable by a Magistrate under any Law other than the Code, shall be exercisable by an Executive Magistrate. In view thereof, the functions under sub-section (3) of Section 13 of the RBD Act 1969 can be exercised by an Executive Magistrate.”

23. There is a reference to this clarification in G.O. Ms. No. 191 issued by the Government of Puducherry, which, we have extracted above.

24. Of course, we are aware that a clarification given by the Central Government is not the be-all and end-all of a legal dispute and the Court has to test the issue legally de hors the clarification.

25. For the purpose of this enquiry, we quote the following provisions from the Code of Criminal Procedure, 1973.

26. Section 3(3) & 3(4) of the Cr.P.C.

“3 Construction of references

(3) Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code:

a to a Magistrate of the first class, shall be construed as a reference to a Judicial Magistrate of the first class;

b to a Magistrate of the second class or of the third class, shall be construed as a reference, to a Judicial Magistrate of the second class;

c to a Presidency Magistrate or Chief Presidency Magistrate, shall be construed as a reference, respectively, to a Metropolitan Magistrate or the Chief Metropolitan Magistrate;

d to any area which is included in a metropolitan area, as a reference to such metropolitan area and any reference to a Magistrate of the first class or of the second class in relation to such area, shall be construed as a reference to the Metropolitan Magistrate exercising jurisdiction in such area.

(4) Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters--

a which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

b which are administrative or executive in nature, such as the granting of a licence, the suspension or cancellation of a licence, sanctioning a prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate.”

27. We may pause here for a moment to note that, in most of the publications, the word "shifting" is found instead of "sifting" in Section 3 (4)(a) of the Code. There is an ocean of difference between the words "shift" and "sift". The New Oxford Dictionary of English defines the words "shift" and "sift" as under:

shift: - to move or cause to move from one place to another, especially over a small distance.

sift: - to examine (something) thoroughly so as to isolate that which is most important or useful.

We found that only in the AIR Manual - Civil and Criminal, the correct expression - "sifting" has been printed.

28. We are also conscious of the provisions of the Tamil Nadu References to Magistrates in Laws (Special Provision) Act, 1980 (Tamil Nadu Act 33 of 1980), which was brought into force with effect from 17.10.1988 by G.O. Ms. No. 2282, Home (Courts-I) Department dated 14.10.1988 and the same will have no application to the present discussion, for, that Act was passed pursuant to the integration of the post of Judicial First Class Magistrate with the cadre of District Munsif and re-designation of the post as District Munsif-cum-Judicial Magistrate under the Tamil Nadu State Judicial Service.

29. After analysing the aforesaid provisions of law, the following propositions emerge:

a that the RBD Act was passed before 01.01.1974 being the date of commencement of Cr.P.C., 1973;

b that in Section 13(3) of the RBD Act, the expression used is "Magistrate of the First Class" and "Presidency Magistrate";

c that in view of Section 3(3)(a) and (c), Cr.P.C., the expression "Magistrate of the First Class" and "Presidency Magistrate" used in Section 13(3) of the RBD Act, should be ordinarily construed as referring to the Judicial Magistrate of the First Class and Metropolitan Magistrate;

d that such a construction ought to be adopted only if the context so requires and not otherwise, because, Section 3(3), Cr.P.C. begins with the expression "unless the context otherwise requires";

e that Section 3(4)(a) and (b) Cr.P.C. clearly delineates the nature and character of judicial and executive functions.

30. We find that Section 4(1)(m) of the old Code of Criminal Procedure, 1898, defined a judicial proceeding as follows:

"4(1) In this Code, the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

(m) "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath"

31. In *P. Rajangam v. State of Madras* [AIR 1959 Madras 294], a Division Bench of this Court, had an occasion to deal with Section 176 of the old Code of Criminal Procedure and in that context, the Division Bench made the following classic observations which are worth quoting:

"All men are mortals, but all mortals are not men. A judicial proceeding may be one in which evidence is or may be legally taken on oath; but all proceedings in which evidence is taken on oath do not necessarily mean judicial proceedings. These proceedings not being judicial proceedings, I do not see how Article 20(3) can be invoked. That applies to a case in which the accused is compelled to be a witness against himself. There is no accused in this case till the facts are ascertained. It may be that some of the police officers who were examined may or may not subsequently turn out to be accused."

(emphasis supplied)

32. Saying so, the Division Bench held that in all judicial proceedings, oath should be taken, but, all proceedings in which evidence is taken on oath, cannot be judicial proceedings. Ultimately, the Division Bench held that an enquiry under Section 176 of the old Code of Criminal Procedure is not a judicial proceeding, though evidence may be taken on oath. From that position, law has further expanded under the new Code of Criminal Procedure, which was designed keeping in mind the need to separate the Judiciary from the Executive. This is clear from the recommendations of the 37th and 42nd Law Commission that formed the basis of the 1973 Code.

33. Now, the moot question that has to be answered is, whether the function of a Magistrate under Section 13(3) of the RBD Act is in the nature of a judicial or executive act.

34. Sections 8 to 11 of the RBD Act mandate passing of information to the authorities, within the time limit prescribed by the State Government, on the happening of a birth or death. Section 13 of the RBD Act provides for delayed registration of a birth or death. We are not concerned with Section 13(1) and (2) of the RBD Act and therefore, it may not be necessary to discuss those provisions. Section 13(3) which has been extracted above, provides for registration after one year of a birth or death. This provision does not empower the Magistrate to conduct any enquiry or trial under the Code of Criminal Procedure. It merely states that the Registrar shall enter the birth or death on an order by a Magistrate after verifying the correctness. (emphasis supplied). In other words, when a person makes an application that he had failed to register a birth/death, within one year, the Magistrate is required to verify the correctness of the information furnished by the person before ordering the Registrar to enter the same in the register.

35. That apart, the verification contemplated by Section 13(3) of the RBD Act is not predicated on adversarial procedure, but, on an inquisitorial methodology. Strangely, a system of procedure got fossilised, under which, the claimant would make an assertion that he was born on a particular date at a particular place in an area; would make the Commissioner of the Corporation/Municipality/Tahsildar of that area as a party respondent in the petition filed under Section 13(3) of the RBD Act; and aver that his birth was not registered within one year. He would apply for a certificate from the Commissioner/Tahsildar and file an application before the jurisdictional Magistrate to the effect that such a birth has not been registered in their office. Naturally, the authorities would issue such a certificate negating the claim. Since the Commissioner/Tahsildar would have no interest in the lis, they would remain ex parte. Based on the paper publication and the sworn statement of the claimant that he was born on a particular date and that the same was not registered within one year, the Magistrate would issue a direction to the authorities to make necessary entries in their record. This spurious procedure, pointed out by the learned Advocate Commissioner in his report, has camouflaged an ordinary executive function to make it look as if it is a judicial act.

36. There is a fallacy that the Magistrate exercising the powers under Section 13(3) of the RBD Act has to look into the reasons for non registration. It is to be borne in mind that it is not a condonation of delay proceeding under Section 5 of the Limitation Act. Section 13(3) of the RBD Act does not require the party to give reasons as to why he did not register a birth or death within the stipulated time. The provision only provides for a second tier authority above the Registrar, to verify the correctness of birth/death and issue a direction to the Registrar to register the same, in the event of the failure of the party to have the birth/death registered within one year. It is beyond cavil that when once there is a dispute between two parties with regard to the date of birth/death of an individual, the same cannot be resolved by the authorities under the

RBD Act and that the parties will have to only approach the Civil Court for such determination. In other words, an entry in the register of the Registrar of Births and Deaths is not a conclusive proof of the date of birth/death and as rightly pointed out by a learned Single Judge of this Court in *Harikrishnan v. James Trinite* [2002-1 LW 105], an order under Section 13(3) of the RBD Act binds only the Registrar and nobody else. In *K. Muthulakshmi v. K. Lakshmiammal* [2011 (8) MLJ 893], one of us (Nagamuthu, J.) has held that an entry made in the Register pursuant to an order passed by the Magistrate under Section 13(3) does not even have the support of the statutory presumption under Section 114(e) of the Evidence Act and is not conclusive proof of the date of birth or death of a person.

37. Assuming for a moment that Rule 9(3) of the TNRBD Rules as it stood prior to its repeal by G.O.Ms. No. 293, had not been there, we would have had no hesitation in holding that the power under Section 13(3) of the RBD Act could be exercised only by an Executive Magistrate and not by a Judicial Magistrate in the light of the scheme of the Act, viewed in the backdrop of Section 3(3) and (4), Cr.P.C.

38. In our opinion, this mischief had crept into the system only on account of old Rule 10(3) of the TNRBD Rules, 1977, which, in our opinion, was beyond the scope of Section 13(3) of the RBD Act read with Section 3(3) and (4) Cr.P.C.. The Union Territory of Puducherry and other States had correctly understood Section 13(3) of the RBD Act in its proper perspective and in their Rules, they have used the expressions "Magistrate of the First Class" and "Presidency Magistrate" and had followed it up with notifications equating First Class Magistrates and Presidency Magistrates with the Executive Magistrates to deal with applications under Section 13(3) of the RBD Act.

39. The TNRBD Rules, 1977, was repealed by the TNRBD Rules, 2000 and Rule 9(3) as it stood prior to G.O. (Ms.) No. 293, was the avatar of the repealed Rule 10(3). Now that the old Rule 9(3) has been replaced by G.O. (Ms.) No. 293, which is impugned herein, it may not be necessary to burden the discussion as to whether the Judicial Magistrates/Metropolitan Magistrates were exercising judicial powers or executive powers under Section 13(3) of the RBD Act. Suffice it to say that they were *persona designata* and were only exercising executive functions, because, had they been exercising judicial functions, their order would not be reviewable in the light of Section 362 of the Code, whereas, Section 15 of the RBD Act expressly provides for a mechanism to correct or cancel an entry in the Register of Births and Deaths. In other words, even if an order had been obtained via the Judicial Magistrate/Metropolitan Magistrate under Section 13(3) of the RBD Act read with the repealed Rule 9(3), the same can be corrected or cancelled under Section 15 of the RBD Act. This conclusively puts the lid on the discussion that the Judicial Magistrates/Metropolitan Magistrates were exercising only executive powers under Section 13(3) of the RBD Act and they were not inferior Courts within the meaning of Section 397, Cr.P.C. The Code of Criminal Procedure is itself not applicable to a proceeding under Section 13(3) of the RBD Act, for, the RBD Act does not say that the verification should be done by following the procedure laid in the Code of Criminal Procedure. Similarly, Section 4 of the Code clearly speaks about the procedure for dealing with offences. Section 13(3) of the RBD Act does not speak of any offence and ergo, the Magistrate cannot use the provisions of the Code of Criminal Procedure to conduct a verification about the correction of the birth/death. Notwithstanding this, this Court and Sessions Courts have been exercising revisional jurisdiction against orders passed by Judicial Magistrates/Metropolitan Magistrates under Section 13(3) of the RBD Act.

40. In view of the above discussion, we hold that the orders that have been passed by the Judicial Magistrates/Metropolitan Magistrates under Section 13(3) of the RBD Act hitherto, are not revisable under Section 397, Cr.P.C. and an entry so made in the register, can be corrected by resorting to the mechanism provided under Section 15 of the RBD Act.

41. The next question that we are required to answer is the source of power for the State Government to pass G.O. (Ms.) No. 293.

42. On a reading of G.O. (Ms.) No. 293, it is clear that it has been passed in exercise of powers under Section 30 of the RBD Act with the approval of the Central Government. It may be apposite to extract Section 30 of the RBD Act 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 the 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."

43. Section 30 of the RBD Act envisages three tiers of rule making power for the State Government, viz., Section 30(1) which is a general power, Section 30(2)(a) to (l) which are specific powers and Section 30(2)(m), which is an overarching power. The reason for giving such a three tier rule making power in the RBD Act can be found in the Statement of Objects and Reasons of the said Act, which can be profitably extracted:

"3 . . . The provisions of the Bill are built closely around the current registration practices, where experience of their working in several States has shown them to be impracticable and inefficient. They unify the existing legal and administrative provisions. They are broad enough to permit State variation in operational details as demanded by the particular characteristics of their respective administrations but are specific enough to ensure development of the system so as to secure a minimum of uniformity and compatibility in coverage and efficiency. The Bill lays down specific principles, general lines of action and

channels of authority but execution is left with the States and accordingly, details of implementation are relegated to the rules to be made by the State Governments with the approval of the Central Government so as to secure a minimum uniformity. . . .”

44. The following passage from paragraph no. 10 of the judgment of the Supreme Court in *St. Johns Teachers Training Institute v. Regional Director, National Council for Teacher Education* [(2003) 3 SCC 321], sanctions such a wide delegation of powers in a given circumstance:

“10. . . . The legislature may, after laying down the legislative policy confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of policy. The need for delegated legislation is that they are framed with care and minuteness when the statutory authority making the rule, after coming into force of the Act, is in a better position to adapt the Act to special circumstances. Delegated legislation permits utilisation of experience and consultation with interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instruments in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs. The regulations made under power conferred by the statute are supporting legislation and have the force and effect, if validly made, as an Act passed by the competent legislature.”

45. To recapitulate, the RBD Act was passed in the year 1969 when the 1898 Cr.P.C. was in vogue. It is common knowledge that the 1898 Code envisaged First Class Magistrates and Presidency Magistrates. With the advent of the 1973 Code, in the State of Tamil Nadu, the posts of Presidency Magistrates and First Class Magistrates stood abolished. Consequential amendments were not made by the Parliament to Section 13(3) of the RBD Act and therefore, it became imperative for the State Government to exercise powers under Section 13(2)(m) of the RBD Act to prescribe an authority to exercise power under Section 13(3) of the RBD Act to effectuate the objects of the Act in consonance with Section 3, Cr.P.C.

46. Section 30(1) mandates that any rule made by the State Government should have the approval of the Central Government and it should be notified in the official gazette. G.O. (Ms.) No. 293 dated 02.12.2016 has been notified in the Tamil Nadu Gazette Issue No. 4, Part III, Section 1(a), Page 28 dated 25.01.2017, after obtaining the approval of the Central Government.

47. Coming to the last contention of the learned counsel for the petitioner that the impugned Government Order does not provide an appellate remedy, the same is far from acceptance, inasmuch as the RBD Act itself does not provide for any appellate remedy. It is a trite proposition that an appeal is a creature of a statute and one does not have a right of appeal sans the parent enactment conferring such a right. In the very scheme of the RBD Act, an appellate remedy against the order passed under Section 13(3) would be a misfit, since it does not involve adjudication of any civil right.

48. Perhaps, the State Government is the worst sufferer of the faulty system, inasmuch as, it has to deal with plethora of petitions for extension of date of retirement on the strength of the orders passed by Judicial Magistrates under Section

13(3) of the RBD Act. The Government Order impugned in the writ petition has only set right the anomaly by empowering the Executive Magistrate, who has, under his command, a well oiled machinery, to conduct enquiries on the veracity of the claims before ordering registration of birth/death. Dictates of common sense also remind us that the Judicial Magistrates/Metropolitan Magistrates have no machinery at their command for verifying the correctness of the claims and they were acting merely on the ipse dixit of the claimant.

49. Before winding up, we may usefully extract the following passage from the order of the Supreme Court in *Committee for Legal Aid to Poor v. Union of India* [(2011) 2 SCC 797], wherein, the Supreme Court has recognised the power of the Executive Magistrate to pass orders under Section 13(3) of the RBD Act:

"13. Section 13 deals with delayed registration of births and deaths on payment of a late fee where the information is given to the Registrar after 21 days but within 30 days of birth and deaths. If the information is given after 30 days but within one year, a late fee is to be paid along with an affidavit. After one year, the birth as well as the death is registered only on an order made by the First Class Magistrate/Executive Magistrate. In all such delayed registration cases, the extract of prescribed particulars from the register relating to birth or death is to be given in format. The Model Registration of Births and Deaths Rules, 1999 made under Section 30 of the Act have been provided to all the States/UTs and based on which the States have framed the State Rules." (emphasis supplied)

50. During the course of our research, we stumbled upon an order dated 14.03.2016 passed by one Mr. S.K. Sharma, District and Sessions Judge, Dibrugarh, Assam in <http://dibrugarhjudiciary.gov.in/Notice/Office%20Order.pdf>, a reading of which fascinated us not only for the correct interpretation of the legal provisions, but also, for the felicity of expression. In the said order, Mr. S.K. Sharma says thus:

"The word "Magistrate" referred to in Section 13(3) of the Registration of Births and Deaths Act, 1969 does not refer to a Judicial Magistrate. A Judicial Magistrate is not required to take up the inquiry/verification of correctness of the date of birth or death, for delayed registration, as mentioned in the above referred provisions. Section 3(3) of the Code of Criminal Procedure (hereinafter referred as the Code) provides "Unless the context otherwise requires, any reference in any enactment passed before the commencement of this Code to a Magistrate of the First Class shall be construed as a reference to a Judicial Magistrate of the First Class." The preceding words "Unless the context otherwise requires" is to be given due weightage in interpreting the meaning of "Judicial Magistrate of the First Class". Section 3(4) & (b) of the Code have very amply elaborated the nature of function to be exercised by both the Judicial Magistrate and the Executive Magistrate."

51. After saying so, his following conclusion is very pragmatic:

"Consequently, it is hereby ordered that no further applications praying for verification/ascertainment/certification, etc. of dates of births or deaths shall be accepted by any Judicial Magistrate of this District w.e.f. the date of this order.

However, in order to avoid hardship to the applicants, the pending applications shall be disposed of by the concerned Judicial Magistrates."

52. Orders of Judges of subordinate judiciary, however extraordinary and praiseworthy they may be, seldom get their due recognition. We still cherish to recount the encomiums paid by the Privy Council in *Raja Bahadur Narasingerji Gyanagerji v. Raja Panuganti Parthasaradhi Rayanim Garu* [AIR 1921 Mad. 498], to Mr. Sundaram Chetty (later Mr. Justice Sundaram Chetty), the then Sub-Judge, Nellore, while reversing the Madras High Court and restoring the judgment of the Sub-Judge, Nellore. Thus spake Lord Blanesburgh on behalf of the Board headed by Lord Atkinson:

"Issues raised by the appellant necessitated in the Courts below and particularly

in the Court of the Subordinate Judge, whose judgment their Lordships would, at once observe is conspicuous for its ability, care and completeness, a prolonged investigation and examination of conflicting evidence.

. . . . The order of the High Court should be discharged and with these variations, the decree of the learned Subordinate Judge should, in their Lordships' opinion, be restored." (emphasis supplied)

53. We place on record, our commendation to Mr. S.K. Sharma, District and Sessions Judge, Assam, for the correct exposition of the law.

54. For the reasons set down above, we have no hesitation in holding that G.O. (Ms.) No. 293, Health and Family Welfare (AB2) Department dated 02.12.2016 is constitutionally valid and the writ petition is liable to be dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Crl.O.P. No. 3868 of 2016:

55. During the pendency of H.C.P. No. 3043 of 2014, the petitioner Mr. Ganapathiah Pillai came up with Crl.O.P. (MD) No. 3868 of 2016 seeking to issue a direction to the jurisdictional Magistrate to initiate proceedings under Section 340 r/w 195 of the Code of Criminal Procedure alleging that the accused therein had committed offences. Since the cause of action for this prayer is also based on a similar death certificate obtained on the orders of a learned Judicial Magistrate, the said Criminal Original Petition was also tagged along with the above H.C.P. No. 3043 of 2014 and accordingly we heard the same also.

56. It is the case of the petitioner that he is the grandson of one Ganapathiah Pillai who died as early as 08.07.2002. While so, one Thangam, a legal heir of Ganapathiah Pillai, claimed illegally that Ganapathiah Pillai had left a will dated 19.04.2004 in which he has bequeathed his properties to him (Thangam) and that Ganapathiah Pillai died on 17.07.2007, but, his death was not registered. Saying so, Thangam illegally and fraudulently obtained an order from the Judicial Magistrate No. II, Srivilliputhur on 20.11.2012 in Crl.M.P. No. 5673 of 2012 under Section 13(3) of the RBD Act, on the strength of which, Thangam obtained a death certificate to the effect that Ganapathiah Pillai had died on 17.07.2007. When Thangam was taking steps to sell Ganapathiah Pillai's properties, on the strength of the will dated 19.04.2004 and the death certificate showing that Ganapathiah Pillai died on 17.07.2007, the petitioner got scent of it and lodged a criminal complaint, based on which, the Station House Officer, Mamsapuram Police Station, registered a case in Cr. No. 87 of 2014 and filed a final report dated 02.02.2015 on 12.03.2015 before the Judicial Magistrate No. II, Srivilliputhur, against Thangam and 4 others for offences under Sections 181, 193, 420, 465, 467, 468 and 471 IPC. But, the Magistrate refused to take cognizance of the offences under Sections 181 and 193 IPC in view of the bar under Section 195, Cr.P.C. and took cognizance of the other offences and numbered the final report as C.C. No. 244 of 2015. Ergo, the petitioner is before this Court for a direction to the Judicial Magistrate, No. II, Srivilliputhur, who had, incidentally passed the order in Crl.M.P. No. 5673 of 2012 under Section 13(3) of the RBD Act on 20.11.2012, to take proceedings against Thangam under Section 195 read with Section 340 Cr.P.C. The petitioner has also prayed for a direction for further investigation in C.C. No. 244 of 2015.

57. In our considered opinion, the Judicial Magistrate No. II, Srivilliputtur, was perfectly correct in not taking cognizance of the offences under Sections 181 and 193 IPC in view of the bar under Section 195, Cr.P.C. However, a direction as prayed for by the petitioner cannot be granted in view of our finding supra that a proceeding under Section 13(3) of the RBD Act is not a judicial proceeding, but, only an executive proceeding. Of course, a Magistrate, be it a Judicial Magistrate or Executive Magistrate, is indubitably a public servant and a person furnishing false evidence before such a public servant, can be prosecuted only on the basis of the complaint made by the said

public servant, as required under Section 195(1)(a), Cr.P.C. An enquiry under Section 340 Cr.P.C. will apply only to a prosecution launched by a Court and not otherwise.

58. As regards the prayer for further investigation, in the light of the law laid down by the Supreme Court in *Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel* [2017 SCC OnLine 86], an order of further investigation can be passed after cognizance is taken only at the instance of the police and not at the instance of the de facto complainant or even suo motu by the Magistrate.

59. In the result, (i) H.C.P. No. 3043 of 2014 is dismissed.

(ii) W.P. (MD) No. 420 of 2017 is dismissed. We hold that G.O. (Ms.) No. 293, Health and Family Welfare (AB2) Department dated 02.12.2016 published in the Tamil Nadu Government Gazette dated 25.01.2017 is constitutionally valid. The Judicial Magistrates/Metropolitan Magistrates in the State of Tamil Nadu cannot pass any order under Section 13(3) of the RBD Act after 25.01.2017. All pending matters are directed to be disposed of with liberty to the petitioners to take recourse to the concerned Executive Magistrates. Any entry made in the Register of Births and Deaths, pursuant to an order passed by Judicial/Metropolitan Magistrates after 25.01.2017 is non-est and such an entry should be deleted. We also direct the Government of Tamil Nadu to issue necessary guidelines to the Executive Magistrates for dealing with petitions under Section 13(3) of the RBD Act. Until guidelines are issued, the Executive Magistrates shall obtain reports from the concerned Village Administrative Officers or Revenue Inspectors and conduct enquiry as far as may be possible by following the procedure laid down in Tamil Nadu Revenue Enquiries Act, 1893. Consequently, connected MP is closed.

(iii) The original petition in CrI.O.P. (MD) No. 3868 of 2016 is also dismissed.

60. Before parting with these matters, we place on record, our profound appreciation to Mr. R. Mohandoss, retired District Judge and Advocate Commissioner, for his painstaking efforts in collecting, collating and submitting the report dated 10.06.2016 that triggered the amendment of Rule 9(3) of the TNRBD Rules and enabled us to effectively adjudicate the issues at hand.

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