

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 13TH DAY OF NOVEMBER 2015/22ND KARTHIKA, 1937

Tr.P(Crl.).No. 72 of 2015 ()

TO TRANSFER MP 1117/2015 FROM THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ALUVA TO ANY ONE OF HTE JUDICIAL FIRST CLASS MAGISTRATE COURT AT VANCHIYOOR, THIRUVANANTHAPURAM

PETITIONER/RESPONDENT:

**S.NUJUMUDHEEN
S/O. SHAMSUDHEEN, SHAMSU MANZIL, KARAKKA MANDAPAM
NEMMOM P.O, TRIVANDRUM**

**BY ADVS.SRI.T.H.ABDUL AZEEZ
SRI.K.SHAMEER MOHAMMED
SRI.K.V.VASAVAN**

RESPONDENTS/PETITIONER & STATE:

**1. NOORJAHAN
D/O. BARU, KIDANGA PILLAI PARAMBU VEEDU
WEST VELIYATHUNAD P.O, KUMARANALLUR VILLAGE
PARAVOOR TALUK 683 511**

**2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM 682 031**

**R1 BY ADV. SRI.M.M.ABDUL RAHIMAN
R2 BY SRI JIBU P.THOMAS, PUBLIC PROSECUTOR**

**THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 13-11-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

APPENDIX

PETITIONER'S ANNEXURE:

- ANNEXURE I:** COPY OF THE NEWS PAPER REPORT IN MALAYALA
MANORAMA DATED 11.05.2009
- ANNEXURE II:** COPY OF THE NEWS PAPER REPORT IN MALAYALA
MANORAMA DATED 11.05.2009
- ANNEXURE III:** COPY OF THE CERTIFICATE DATED 12.06.2009 ISSUED FROM
THE DEPARTMENT, NERO SURGERY, MEDICAL TRUST
HOSPITAL, ERNAMULAM
- ANNEXURE IV:** COPY OF THE CERTIFICATE DATED 31.10.2011 ISSUED FROM
THE DEPARTMENT, NERO SURGERY, MEDICAL TRUST
HOSPITAL, ERNAMULAM
- ANNEXURE V:** COPY OF THE MEDICAL CERTIFICATE DATED 08.08.2015
ISSUED FROM DEPARTMENT OF NEUROLOGY, MEDICAL
COLLEGE HOSPITAL, TRIVANDRUM

RESPONDENTS' ANNEXURE:

- ANNEXURE R1(A):** COPY OF THE MEDICAL CERTIFICATE ISSUED BY
DR.S.DHANANJAYAN OF GENERAL HOSPITAL, ERNAKULAM

//TRUE COPY//

P.A. TO JUDGE

JV

K. RAMAKRISHNAN, J.

Tr.P.(Crl.) No.72 of 2015

Dated this the 13th day of November, 2015

ORDER

This is an application filed by the petitioner who is respondent in Crl.M.P.No.1117/2015 on the file of the Judicial First Class Magistrate Court-II, Aluva to Judicial First Class Magistrate Court at Thiruvananthapuram under Section 407 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is the respondent in Crl.M.P.No.1117/2015 on the file of the Judicial First Class Magistrate Court-II, Aluva and the 1st respondent is the petitioner in that case. That petition was filed by the 1st respondent claiming relief under the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986.

3. The petitioner met with an accident and lost his present wife and five other members of his family and he has been suffering from 70% permanent disablement. He had undergone two major operations in 2009 and 2011 and he could not move without the help of others. He is still undergoing treatment. So he is completely bedridden and it is not possible

for him to travel 250 kms and conduct the case at Aluva. So it is necessary to transfer the case to one of the courts at Thiruvananthapuram. Hence the petition.

4. Heard both sides.

5. The counsel for the petitioner submitted that since the petitioner is completely bedridden and he is unable to move, it is not possible for him to go and conduct the case at Aluva.

6. It is seen from the petition that the divorced wife of the petitioner, the 1st respondent herein, filed Crl.M.P. No.1117/2015 under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986 against the petitioner herein claiming reliefs under that Act. The petitioner is now residing at Thiruvananthapuram. That is not a ground for transferring the case to Thiruvananthapuram driving a divorced women to go to Thiruvananthapuram to conduct the case. For the purpose of conducting the case, the personal presence of the petitioner is not required. He can either appear through power of attorney or appear through counsel, file objection and conduct the case. If at all, if he wants to be examined in the case at a later stage, if he is not able to appear in person for giving evidence, he can move the court for examining him on Commission or by other

methods permissible under law. Even if the case is transferred to Thiruvananthapuram, he may not be able to appear in person and conduct the case in view of the allegations made by the petitioner in the petition. So under the circumstances, this Court feels that there is no necessity to transfer the case to any of the criminal courts at Thiruvananthapuram. The petition lacks merits and the same is liable to be dismissed.

In the result, the petition is dismissed with the above observation that petitioner can appear through counsel and conduct the case and if his examination is required, he can move the court for examination by taking out a Commission or other methods known to law in accordance with law and if such an application is filed, the Magistrate is at liberty to consider and dispose of the application in accordance with law. Interim order of stay granted is vacated and Crl.M.A.No.7969/2015 is dismissed.

Office is directed to communicate this order to the concerned court immediately by fax.

SD/-
K. RAMAKRISHNAN,
JUDGE