

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

Tr.P(C).No. 589 of 2014

**OP 1780/2014 OF FAMILY COURT, ERNAKULAM TO FAMILY COURT,
THIRUVANANTHAPURAM**

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PETITIONER(S)/RESPONDENT:

**DIVYA SUSAN MATHEW, AGED 24 YEARS,
D/O.MATHEW ALEXANDER, JOY VILLA, T.C NO 36/291(1),
MANAVA NAGAR, PETTAH P.O., THIRUVANANTHAPURAM - 695 024.**

**BY ADVS.SRI.D.KISHORE
SMT.MINI GOPINATH**

RESPONDENT(S)/PETITIONER:

**DEEPU JOHN JOHN, AGED 28 YEARS,
S/O. JOHN, KAIMANNIL HOUSE, FORT VALLEY THOWNSHIP,
KAKKANAD ATHANI, KUSUMAGIRI, COCHIN - 682 030.**

BY ADV. SRI.MANU ROY

**THIS TRANSFER PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

Tr.P.C.No. 589 of 2014

APPENDIX

PETITIONER(S)' ANNEXURES:

**ANNEXURE I : TRUE COPY OF M.C.5/2014 FILED BY THE PETITIONER AND HER
INFANT DAUGHTER.**

**ANNEXURE II: TRUE COPY OF THE ORIGINAL PETITION IN O.P.1780/2014 OF FAMILY
COURT, ERNAKULAM.**

RESPONDENT(S)' ANNEXURES:

ANNEXURE R1: COPY OF NOTICE DATED 9.8.2014.

ANNEXURE R2: COPY OF THE ORDER IN CRL. M.C.1601/2014.

ANNEXURE R3: COPY OF THE ORDER B.A.NO.7169/2014.

ANNEXURE R4: COPY OF THE COMPLAINANT DATED 27.9.2014.

ANNEXURE R5: COPY OF THE PETITION DATED 11.11.2014.

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.BHAVADASAN, J.

Transfer Petition (Civil) No.589 OF 2014

Dated this the 8th day of January, 2015.

O R D E R

This is a petition filed under Section 24 of the Code of Civil Procedure seeking transfer of O.P.No.1780/2014 from Family Court, Ernakulam to Family Court, Thiruvananthapuram.

2. Suffice to say that, the marital relationship between the petitioner and the respondent ran into rough weather and litigations are in plenty. The petitioner has instituted M.C.No.5/2014 before the Additional Chief Judicial Magistrate Court, Thiruvananthapuram seeking relief under the Protection of Women from Domestic Violence Act, 2005. It is pointed out that the petitioner is currently employed at Thiruvananthapuram and she has a young child to look after. The respondent has instituted O.P.No.1780/2014 before the Family Court, Ernakulam seeking divorce.

3. According to the petitioner, she finds it extremely

difficult to come over to Ernakulam frequently to attend the case on each posting date. Moreover, she claims that she has a child to look after. She also points out that there is nobody to accompany her to go to Ernakulam. On the basis of these pleas, she prays for transfer.

4. The petition is very vehemently opposed by the respondent. He points out that the petitioner has filed almost three complaints alleging offence under Section 498A IPC in three different places making the respondent and his family members run around and she is creating havoc. It is also pointed out that he is being threatened by the petitioner and her relatives and their attempt is to prevent the respondent from attending the case in the Family Court, Ernakulam. It is also contended that he was beaten up at Thiruvananthapuram by the parents of the petitioner.

5. Relying on the decision in **Anindita Das vs. Srijit Das** (2006 KHC 1887), learned counsel appearing for the respondent contended that employment of petitioner-wife is not a sufficient ground for transfer and each case has to be considered on its

merits and in the case on hand, except for saying that she is employed at Thiruvananthapuram and she has a child to look after, there is no other ground seeking transfer. It is also pointed out that it is not necessary for the petitioner to come over to Ernakulam on each posting date and she can seek exemption by appropriate means.

6. Learned counsel appearing for the petitioner placed reliance on the decisions in **Sithara** vs. **Rajesh** (2009 (4) KHC 269) and in **Anjali Ashok Sadhwani** vs. **Ashok Kishinchand Sadhwani** (AIR 2009 SC 1374) and contended that the consistent stand taken by courts is that the petition by the wife would be viewed with leniency since in all the posting dates wife cannot seek exemption from appearance. In the case on hand, the situation is such that the wife is employed at Thiruvananthapuram and she has to take leave for attending the case which will affect her employment.

7. It is very sad to know that the relationship has become so bitter which is evident from the accusation levelled against each parties and as revealed from the records produced before

the court. The petitioner has instituted proceedings before the Additional Chief Judicial Magistrate Court, Thiruvananthapuram under the Protection of Women from Domestic Violence Act, 2005 and that is pending. The respondent, on the other hand, has a grievance that as vengeance, the petitioner is filing complaints after complaints in various Police Stations making the respondent and his family members on hooks. It is pointed out that the intention is only to harass the respondent and there is no real grievance for the petitioner for having the case transferred to Family Court, Thiruvananthapuram.

8. After having gone through the decisions cited by the counsel on both sides, it becomes evident that each case has to be decided on the facts of each case. As a general rule, it can be said that the petition filed by the wife has to be viewed with leniency. But that is not an invariable rule. In the case on hand, it is not in dispute that the petitioner is employed at Thiruvananthapuram. It is not proper for this Court to ascertain whether the allegations levelled against each parties are true or not. As pointed out by the learned counsel for the respondent, it

is not necessary for the petitioner to appear before the Family Court, Ernakulam on each posting date. She can seek exemption from personal appearance.

9. It needs to be noticed that the petitioner is employed at Thiruvananthapuram and she has a baby child now aged approximately 6 months and she has to take care of her child. Even though it may be possible to say that it is not necessary for the petitioner to come over to Ernakulam in all the posting dates and she can seek exemption, it is a fact that she cannot always seek exemption. Whenever she comes over to Ernakulam to attend the case, she has to bring her child also.

10. Considering the fact that the petitioner is employed at Thiruvananthapuram and she has a young child to look after, it is felt that some leniency can be shown in the matter.

For the above reasons, this petition is allowed and O.P.No.1780/2014 pending before the Family Court, Ernakulam shall stand transferred to Family Court, Thiruvananthapuram. The apprehension expressed by the respondent regarding assault at the hands of the petitioner and her family members will be

brought to the notice of the Family Court, Thiruvananthapuram and the said court may pass appropriate orders.

Sd/-

P.BHAVADASAN
JUDGE

smp