

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2016

CORAM

THE HONOURABLE MS.JUSTICE R. MALA

CRL.O.P.No.2782 of 2016

and

CrI.M.P.No.1471 of 2016

Ramakrishnan

.. Petitioner

.. Vs ..

1. Gomathi
2. Raja
3. Shubashini
4. Sampath
5. Vanitha
6. Alamelu
7. Tamilselvi
8. Dinesh

.. Respondents

Prayer:- Criminal Original Petition filed under Section 407 read with Section 482 of the Code of Criminal Procedure, praying to set aside the order dated 08.12.2015 in Tr.CrI.M.P.No.1738 of 2014 passed by the Principal Sessions Judge, Erode, and transfer the case in CMP No.9800 of 2011 from the file of the Judicial Magistrate No.III, Erode, to any Judicial Magistrate at Erode.

For Petitioner : Mr.R.Ezhilarasan
For R-1 : Mr.N.Manokaran
For R2 to R8 : Notice served

ORDER

The petitioner has come forward with the present petition seeking to set aside the impugned order dated 08.12.2015 passed in Tr.CrI.M.P.No.1738 of 2014 by the learned Principal Sessions Judge, Erode, and transfer the case in CMP No.9800 of 2011 from the file of the learned Judicial Magistrate No.III, Erode, to any Judicial Magistrate at Erode.

2. The learned counsel for the petitioner submitted that the petitioner is facing domestic violence case in the petition filed by the first respondent/wife in C.M.P.No.9800 of 2011 and the first respondent/wife has filed a petition in C.M.P.No.891 of 2012 before the learned Judicial Magistrate No.III, Erode, for custody of the children and the said

petition was dismissed with an observation that the guardianship and custody of the child is to be decided only by the District Court, Salem, in the Guardian Original Petition. Thereafter, the first respondent/wife has filed another petition in C.M.P.No.6212 of 2014 before the learned Judicial Magistrate No.III, Erode, for the same relief viz., directing the petitioner herein to produce the children at the residence of the first respondent/wife or any other common place during the weekends and permit the children to spend the weekends with the first respondent/wife and then permit the first respondent herein to visit the children in the school premises or any other common place. The learned Magistrate harassed the petitioner herein by making him to wait in the Court till 5.30 p.m. on each hearing and also compelling him to produce the children. Hence, the petitioner herein has filed a petition in Tr.Crl.M.P.No.1738 of 2014 before the learned District and Sessions Judge, Erode, seeking transfer of the case in C.M.P.No.9800 of 2011 from the file of the learned Judicial Magistrate No.III, Erode, to any other Court of Judicial Magistrate at Erode. The learned Principal Sessions Judge, Erode, after hearing both sides, had dismissed the petition in Tr.C.M.P.No.1738 of 2014, by order dated 08.12.2015. As against the said order, the present criminal original petition has been filed seeking to set aside the order passed by the learned Principal Sessions Judge, Erode, in Tr.C.M.P.No.1738 of 2014, dated 08.12.2015. The learned counsel for the petitioner further submitted that the children are with the petitioner and the petitioner is ready to face the trial in any other Judicial Magistrate Court instead of Judicial Magistrate No.III, Erode, and hence, he prays for an order.

3. At this juncture, the learned counsel appearing for the first respondent would submit that the learned Principal Sessions Judge, Erode, after getting remarks from the learned Judicial Magistrate No.III, Erode, and considering the attitude of the petitioner only, had passed order dismissing the petition. The learned counsel would further submit that the prayer sought for by the first respondent/wife in C.M.P.No.6212 of 2014 is not related to permanent custody of the children, but the said petition was filed for producing the children and spending time during the weekends with the mother/first respondent herein and therefore, it is not a prayer as sought for in the earlier petition filed in C.M.P.No.891 of 2012 and hence, he prayed for dismissal of the petition.

4. This Court has considered the rival submissions made by the learned counsel on either side and perused the records.

5. On a perusal of the typed set of papers, it is seen that the first respondent/wife has filed a petition before the Protection Officer, Social Welfare Office, Erode, against the

petitioner and the respondents 2 to 8 and the same has been forwarded by the Protection Officer to the learned Judicial Magistrate No.III, Erode, and the same was taken on file in C.M.P.No.9800 of 2011. During the pendency of the same, the first respondent/wife has filed a petition in C.M.P.No.891 of 2012 for custody of the children and the said petition was dismissed by the learned Judicial Magistrate No.III, Erode, on 22.02.2012 stating that the guardianship and custody of the child has to be decided by the District Judge, Salem. Thereafter, the petition in C.M.P.No.6212 of 2014 has been filed by the wife/first respondent herein for visiting the children during the weekends. So, the argument advanced by the learned counsel for the petitioner that the first respondent/wife has filed subsequent petition in C.M.P.No.6212 of 2014 for the same relief does not merit acceptance, since in the said petition, the learned Judicial Magistrate No.III, Erode, has directed the husband/petitioner herein to produce the children before the Court to facilitate the mother to see the children. But admittedly, the son alone was produced and the daughter was not produced and the son is not willing to go along with his mother/first respondent herein. Since the transfer petition has been filed, the learned Principal Sessions Judge, Erode, called for the remarks from the learned Judicial Magistrate No.III, Erode, and on that basis, the learned Principal Sessions Judge has passed order dismissing the transfer petition.

6. According to the learned counsel for the petitioner, the first respondent is living in adultery and she is not entitled to see the children. The learned Principal Sessions Judge, Erode, has considered that aspect in proper perspective and dismissed the transfer petition filed by the petitioner. On a perusal of paragraph Nos.6 and 7 of the order passed in the transfer petition, I do not find any reason to interfere with the dismissal order passed by the learned Principal Sessions Judge, Erode, in Tr.Crl.M.P.No.1738 of 2014, dated 08.12.2015. Hence, this Criminal Original Petition is dismissed as devoid of merits.

7. The learned Judicial Magistrate No.III, Erode, is directed to dispose of the case in C.M.P.No.6212 of 2014, within a period of one month from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Jr1

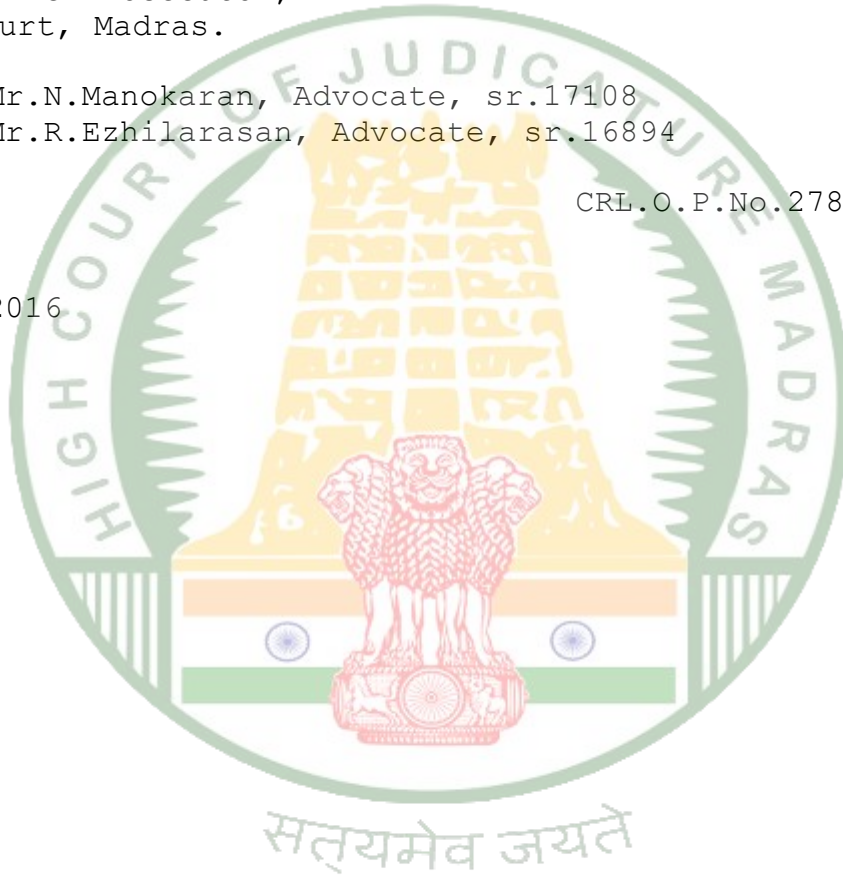
To

1. The Principal Sessions Judge,
Erode.
2. The Judicial Magistrate No.III,
Erode.
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.N.Manokaran, Advocate, sr.17108
+1 cc to Mr.R.Ezhilarasan, Advocate, sr.16894

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vsn co
kr 29.03.2016



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