

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.3820 of 2016

and

Crl.M.P.No.1951 of 2016

S.Sudhakar

... Petitioner

Vs

1.D.Tharangini

2.Minor Nirjarkumar rep through
Natural mother and natural guardian,
D.Tharangini.

... Respondents

Prayer:

Criminal Original Petition filed under Section 482 Cr.P.C. seeking a direction to withdraw the M.C.No.55 of 2015 from the file of the Judicial Magistrate Court, Perambalur and to transfer the same in to the file of the Judicial Magistrate, Madurai.

For Petitioner : Mr.C.Sangamithirai
For Respondents : Mr.R.Selvakumar

O R D E R

The petitioner has come forward with this petition seeking for a direction to withdraw the case in M.C.No.55 of 2015 from the file of the Judicial Magistrate Court, Perambalur and to transfer the same in to the file of the Judicial Magistrate, Madurai.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The learned counsel for the petitioner submits that the respondent/wife has filed a petition in M.C.No.55 of 2015 under Section 125 Cr.P.C. on the file of Judicial Magistrate Court, Perambalur for claiming maintenance. He further submitted that the since the petitioner is a Building Supervisor and he is not having any permanent income, he has no means to travel more than 210 Kilometers to attend the Court at Perambalur for each and every hearing. He further submits that the first respondent's

family is having muscle power and already they have threatened the petitioner and his family members with dire consequences and if the petitioner went to Perambalur, his life will be endangered. Hence, the petitioner has filed the present petition to transfer the case in M.C.NO.55 of 2015 from the file of Judicial Magistrate Court, Perambalur to Judicial Magistrate, Madurai.

4. Resisting the same, the learned counsel appearing for the respondents would submit that the respondent/wife is having one year old child and it is very difficult for her to travel from Perambalur to Madurai and therefore, he prays for dismissal of this petition.

5. At this juncture, the learned counsel for the petitioner would submit that the respondent has given a complaint against the petitioner before the All Women Police Station, Madurai and therefore, he prays for allowing this petition.

6. On a perusal of the typed set of papers it is seen that the petitioner has filed H.M.O.P.No.649 of 2015 for divorce before the Family Court, Madurai and after that only the respondent/wife has filed a petition in M.C.No.55 of 2015 on the file of the Judicial Magistrate Court, Perambalur under Section 125 Cr.P.C claiming maintenance. However, in the decision in 2000 (2) T.L.N.J.158 (Sudha v. Vaidyanathan), it has been specifically stated that if the wife is having child below the age of five years, the wife is entitled to transfer the case where she is residing. In the case on hand, the respondent/wife is residing at Perambalur and she has filed a petition in M.C.No.55 of 2015 before the Judicial Magistrate Court, Perambalur. In such circumstances, I do not find any reason to transfer the case from the file of the Judicial Magistrate Court, Perambalur to the file of the Judicial Magistrate, Madurai. Hence, this petition deserves to be dismissed. Accordingly, this Criminal Original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

vsm

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To
The Judicial Magistrate, Perambalur.

+ 1 cc to Mr.R.Selvakumar, Advocate SR 21815

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Cr1.O.P.No.3820 of 2016