



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED : 20.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

TR.CMP(MD)No.395 of 2016  
and C.M.P(MD)No.7685 of 2015

Chitra

..Petitioner

vs.

P.Venkatesh @ Karthikeyan

..Respondent

Petition filed under Section 24 of the Civil Procedure Code, to HMOP.No.94 of 2016 from the Family Court, Madurai and to transfer the same to the file of the Sub Court, Thoothukudi.

For Petitioner : Mr.K.Vijay Anand for Ms.P.Latha  
For Respondent : No Appearance

#### ORDER

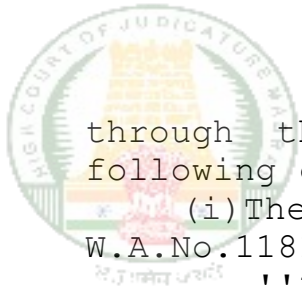
The short facts narrated by the petitioner is that the marriage between the petitioner and the respondent was solemnized on 20.10.2013 as per the Hindu rites and customs. Though the petitioner has raised various allegations against the respondent, regarding the cruelty and other aspects, this court is of the opinion that those allegations need not be considered at this point of time, especially, in the present petition seeking transfer of HMOP.No.94 of 2016 from the Family Court, Madurai, to the Sub Court, Tuticorin.

2. The petitioner states that the respondent/husband filed HMOP.No.94 of 2016 for divorce and per centra, the petitioner filed a complainant under Domestic Violence Act, against the respondent, before the Judicial Magistrate Court, Srivaikundam, which is numbered as D.V.No.1 of 2016. The contention of the petitioner is that she is living in her parents' house and she has no other sources of income even to meet out the day-to-day expenses. Further, it is stated that the parents of the petitioner are in old age and not having sufficient means to meet out the expenditure of the petitioner. Under these circumstances, the petitioner is not in a position to spend and travel to Madurai from Tuticorin and she will be put to hardship.

3. Despite service of notice on the respondent and his name being printed in the cause list, there is no representation on his behalf either in person or through pleader and therefore, this court is constrained to pass orders on merits.

4. The allegations raised by the petitioner need not be considered at this point of time in this transfer petitioner, as the same are to be adjudicated on merits in the HMOP.

5. The principles regarding transfer petitions, more specifically in the matters of matrimonial cases are well settled



through the decisions of the High Court of Madras, in the following cases:-

(i) The Hon'ble Division Bench of the High Court of Madras in W.A.No.1181 of 2009, dated 09.07.2010 has held as follows:-

'21. The domicile or citizenship of the opposite party is immaterial in a case like this. In case the marriage was solemnized under Hindu Law marital relationship is governed by the provisions of the Hindu Marriage Act. Therefore, Section 19 has to be given a purposeful interpretation. It is the residence of the wife, which determines the question of jurisdiction, in case the proceeding was initiated at the instance of the wife.

22. While considering a provision like Section 19 (iii-a) of the Hindu Marriage Act, the objects and reasons which prompted the parliament to incorporate such a provision has also to be taken note of. Sub Clause (iii-a) was inserted in Section 19 with a specific purpose. Experience is the best teacher. The Government found the difficulties faced by women in the matter of initiation of matrimonial proceedings. The report submitted by the Law Commission as well as National Commission for Women, underlying the need for such amendment so as to enable the women to approach the nearest jurisdictional court to redress their matrimonial grievances, were also taken note of by the Government. Therefore such a beneficial provision meant for the women of our Country should be given a meaningful interpretation by Courts.'

(ii) In yet another case in TR.CMP.Nos.138 and 139 of 2006, dated 30.08.2006, the High Court of Madras has considered the following judgments of the Hon'ble Supreme Court:-

'16. In AIR 2000 SC 3512 (1) (Mona Aresh Goel vs. Aresh Satya Goel), when the wife pleaded that she was unable to bear the traveling expenses and even to travel alone and stay at Bombay, the Supreme Court ordered transfer of proceedings.

In 2000 (10) SCC 304, the Honourable Supreme Court has held that where the petitioner's wife has pleaded lack of money, the same has to be considered.

In 2000 (9) SCC 355, the wife has filed a petition to transfer the proceedings initiated by the husband for divorce, at Bombay. The place of residence of the wife was at Jaipur, Rajasthan. In that case, the petitioner is having a small child and that she pleaded difficulty in going all the way from Jaipur to Bombay to contest the proceedings from time to time. Considering the distance and the difficulties faced by the wife, the Supreme Court has allowed the transfer petition.

In a decision reported in 2005 (12) SCC 395, the wife has sought for transfer of matrimonial proceedings and a divorce petition has been filed by the respondent's husband



at Baikunthpur to be transferred to Allahabad, where the petitioner's wife was residing, on the ground that it would be difficult for her to undertake such long distance journey, particularly in circumstances, in which she finds that the proceedings under Section 125 Cr.P.C. was already pending before the Family Court, Allahabad. Considering the difficulties faced by the wife and also the long distance journey, the Honourable Supreme Court was pleased to order transfer of the proceedings to Allahabad.

(iii) In a decision made in TR.CMP(MD)No.108 of 2010, dated 03.03.2011, the Madurai Bench of Madras High Court, has observed as below:-

'18. It is true that section 19 of the Hindu Marriage Act, has been amended by insertion of proviso of (iii)(a) to section 19. Of Course, this amended section 19(iii)(a) gives special preference to the wife to file a petition or defending the case of the husband before the Court within whose jurisdiction she resides. The intention of the legislator is to safe-guard the interest and rights of the women, who are being subjected to harassment and cruelty. But this special preference conferred under section 19(iii)(a) of the Hindu Marriage Act shall not be used to wreck vengeance on the husband. There must be a justifiable cause to select the jurisdiction of the Court where she resides.'

6. In view of the abovesaid precedents, this court is of the opinion that it is fit case for transfer accordingly, this is allowed and H.M.O.P.No.94 of 2016 pending on the file of the Family Court, Madurai, is ordered to be transferred to the file of the Sub Court, Thoothukudi, forthwith. No costs. Consequently, C.M.P(MD)No.7685 of 2016 is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS)  
Madurai Bench of Madras High Court,  
Madurai-23.

To

- 1) The Judge, Family Court, Madurai.
- 2) The Subordinate Judge, Sub Court, Thoothukudi.

+1cc to M/s.P.Latha, Advocate in SR.61765

TR.CMP(MD)No.395 of 2016  
20.10.2016

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