

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.08.2017
Pronounced on : 22.09.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.5198 of 2017
and Crl.M.P.No.3875 of 2017

Rani

.. Petitioner

Vs.

Ganesan

.. Respondent

Prayer: Criminal Original Petition filed under Section 407 Cr.P.C. praying to withdraw the case M.C.No.1 of 2016 on the file of the learned Judicial Magistrate No.I, Dharmapuri and to transfer to the Family Court, Dharmapuri for having joint trial along with F.C.H.M.O.P.No.212 of 2016 on the file of the Family Court, Dharmapuri.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.S.Sathiaseelan

ORDER

Heard Mr.C.Munusamy, learned counsel for the petitioner and

Mr.S.Sathiaseelan, learned counsel for the respondent.

2.The brief facts of the case are as follows:

The petitioner, who is the wife of the respondent herein, has filed M.C.No.1 of 2016 before the learned Judicial Magistrate-I, Dharmapuri under the Protection of Women from Domestic Violence Act, 2005 seeking for maintenance and residential accommodation. The respondent herein has filed MCOP.No.212 of 2016 before the learned Judge, Family Court, Dharmapuri seeking for dissolution of the marriage. Since both the proceedings are pending in Dharmapuri District, the petitioner has filed the petition under Section 482 of Cr.P.C., seeking for transfer of M.C.No.1 of 2016 both for having joint trial in HMOP.No.212 of 2016 before the learned Judge, Family Court, Dharmapuri.

3.The only ground raised by the learned counsel for the petitioner is that since the issues involved in both the cases are one and the same, it would be desirable to have a joint trial to avoid conflicting decisions. The learned counsel for the respondent on the other hand submitted that it is not legally permissible for petition filed under Domestic Violence Act to be tried in divorce petition

before a Family Court.

4.I have given careful consideration to the submissions made by the respective counsels.

5.The learned counsel for the respondent submitted that the proceedings under Domestic Violence Act before the learned Judicial Magistrate, Court and the proceedings for divorce before the Family Court are totally distinct and cannot be tried together. On the other hand, the learned counsel for the petitioner resisted the submissions by relying upon Section 26 of the Domestic Violence Act and stated that there is no impediment for joint trial of the divorce proceedings as well as the Domestic Violence Act proceedings.

6.I do not intend to go into this question as the present petition seeking for transfer is bound to fail in view of the proviso to Section 407 (2) of Cr.P.C. The said provision is reads as follows:

"The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one

Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.”

7. In the present case in hand, the transfer that is sought for is within the same District and therefore, in view of the proviso to Section 407(2) of Cr.P.C., the transfer petition made directly to the High Court is not maintainable. The proviso is clearly worded to the effect that a prior application for such transfer within the same District has to be made to the learned Sessions Judge, before approaching the High Court.

8. In view of the same, the present petition made without approaching the Sessions Court is not maintainable. Therefore, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

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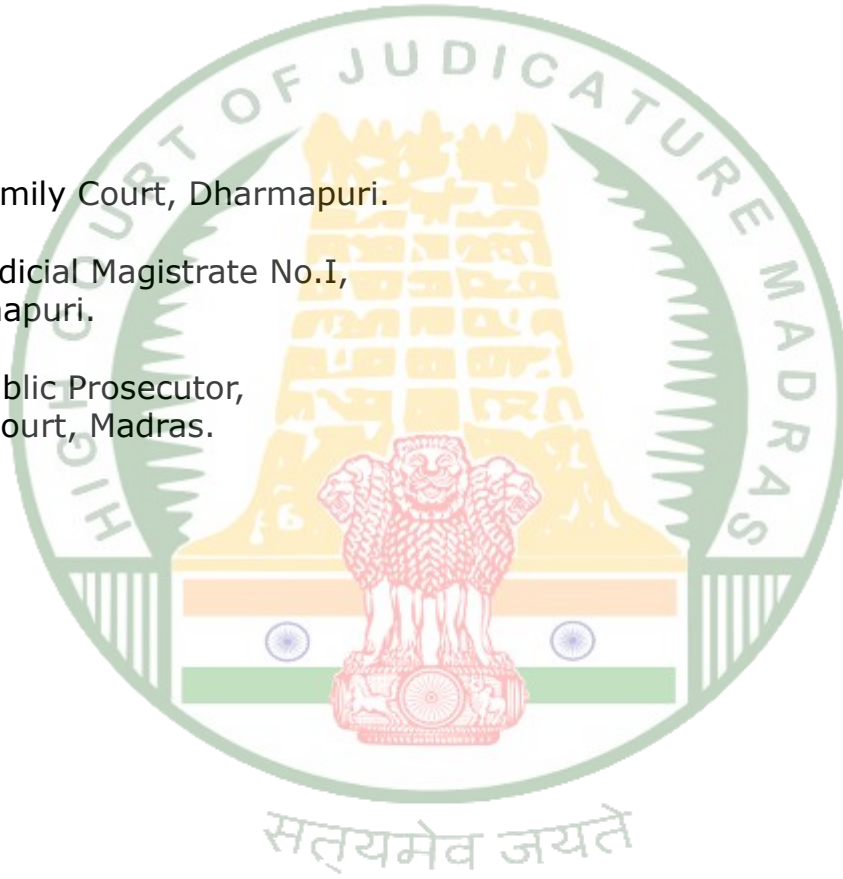
Index:Yes/No
Internet:Yes/No
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To

1.The Family Court, Dharmapuri.

2.The Judicial Magistrate No.I,
Dharmapuri.

3.The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH.J,

DP



**order made in
Crl.O.P.No.5198 of 2017
and Crl.M.P.No.3875 of 2017**

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