

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2018

CORAM :

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

Tr.C.M.P. No.378 of 2017
and C.M.P.No.7386 of 2017
& Crl.O.P.No.3688 of 2017
and Crl.M.P.No.2727 of 2017

Tr.C.M.P.No.378 of 2017

A.Asha Rani @ Sheela ... Petitioner

Vs.

P.Ramesh ... Respondent

Prayer:- Petition is filed under Section 24 of C.P.C., to withdraw H.M.O.P.No.58 of 2016 pending on the file of the Sub Court, Chidambaram and transfer the same to the file of the Principal Family Court, Chennai, to be tried along with O.P.No.1115 of 2017 pending on its file.

Crl.O.P.No.3688 of 2017:

A.Asha Rani @ Sheela ... Petitioner

Vs.

P.Ramesh ... Respondent

Prayer:- Petition is filed under Section 407 of Cr.P.C., to withdraw M.C.No.6 of 2013 pending on the file of the Judicial Magistrate's Court No.II, Chidambaram and transfer the same to the Court having jurisdiction over the residence of the petitioner viz., XVII Metropolitan Magistrate's Court, Saidapet, Chennai.

In both Tr.C.M.P. and Crl.O.P.

For Petitioner
in both cases
For Respondent
in both cases

: Mr.K.A.Mariappan
: M/S.R.J.Radhika for Mr.R.Ravi

COMMON ORDER

Tr.C.M.P.No.378 of 2017 is filed to withdraw H.M.O.P.No.58 of 2016 pending on the file of the Sub Court, Chidambaram and transfer the same to the file of the Principal Family Court, Chennai, to be tried along with O.P.No.1115 of 2017 pending on its file.

Crl.O.P.No.3688 of 2017 is filed to withdraw M.C.No.6 of 2013 pending on the file of the Judicial Magistrate's Court No.II, Chidambaram and transfer the same to the Court having jurisdiction over the residence of the petitioner viz., XVII Metropolitan Magistrate's Court, Saidapet, Chennai.

2.In both the Tr.C.M.P. and Crl.O.P., the parties and the reasons given by the petitioner are one and the same and therefore, they are disposed of by this common order.

3.The petitioner is the wife and respondent is the husband. The marriage between the petitioner and respondent was conducted on 23.01.2005 as per Hindu rites and customs. In the wedlock, a female child was born on 03.11.2005. The respondent and his mother ill-treated the petitioner by demanding huge sum of dowry and thrown her out from the matrimonial home. The petitioner was residing at one of her relative's house at Chidambaram and lodged a complaint against the respondent and his mother before All Women Police Station, Chidambaram. The petitioner has filed M.C.No.6 of 2013 under the Domestic Violence Act, for maintenance, before the Judicial Magistrate's Court No.II, Chidambaram. The respondent filed H.M.O.P.No.58 of 2016 for divorce against the petitioner, on the file of the Sub Court, Chidambaram.

4.According to the petitioner, she is attending every hearing before the Sub Court at Chidambaram. The petitioner left Chidambaram and is now residing along with her mother at Ambattur, Chennai. The petitioner admitted her minor daughter in a school at Chennai. The distance between Chennai and Chidambaram is more than 210 kilometers. She has to leave Chennai early in the morning and is able to return only late in the night and hence, the petitioner is finding it very difficult to attend the Court proceedings at Chidambaram. The petitioner's mother, who is aged about 76 years, is finding it very difficult to maintain and look after the minor daughter. The petitioner filed O.P.No.1115 of 2017 on the file of the Principal Family Court, Chennai, for restitution of conjugal rights, against the respondent. The respondent is attending the Court regularly without any difficulty. For the above reason,

the petitioner has come out with the present Tr.C.M.P. to transfer H.M.O.P.No.58 of 2016 pending on the file of the Sub Court, Chidambaram, to the file of the Principal Family Court, Chennai, to be tried along with O.P.No.1115 of 2017 pending on its file and Crl.O.P. to transfer M.C.No.6 of 2013 pending on the file of the Judicial Magistrate's Court No.II, Chidambaram, to the Court having jurisdiction over the residence of the petitioner viz., XVII Metropolitan Magistrate's Court, Saidapet, Chennai.

5.The learned counsel for the petitioner submitted that even the maintenance case filed under Domestic Violence Act can be heard by the Family Court. In support of his contention, he has relied on the following judgments:

(i) Order dated 09.12.2011 made in Tr.C.M.P.No.733 of 2011 (Selin Raja alias Maria Selin Raj);

"4.That apart, Section 26 of the Protection of Women from Domestic Violence Act, 2005, gives ample power to the Family Court to deal with the proceedings initiated by the wife under the Domestic Violence Act."

(ii) (2014) 10 SCC 736 (Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and another);

"Any relief available under Sections 18 to 22 of the Protection of Women from Domestic Violence Act, 2005 may also be sought for in any legal proceeding even before a Civil Court and Family Court, apart from the Criminal Court, affecting the aggrieved person whether such proceeding was initiated before or after the commencement of the DVA Act. Even before the Criminal Court where case under Section 498A IPC is pending, if the allegation is found genuine, it is always open to the appellant to ask for reliefs under Sections 18 to 22 of the DVA Act and interim relief under Section 23 of the DVA Act."

6.The learned counsel for the respondent filed counter affidavit and submitted that the petitioner has also filed one more criminal case in C.C.No.137 of 2013, which is pending on the file of the District Munsif Court-cum-Judicial Magistrate's Court, Portonovo (Parangipettai). The respondent has to appear before the Court at Parangipettai thrice and before the Court at Chidambaram once in every month. The respondent has to attend three Courts in different dates, due to that, the respondent has incurred heavy loss, as he is unable to concentrate on his work and he has to look after his aged mother, who is suffering from

various ailments. The respondent has also filed Transfer Crl.M.P.No.1577 of 2016 on the file of the Principal District Court, Cuddalore, for transferring the case in M.C.No.6 of 2013 from the file of the Judicial Magistrate's Court No.II, Chidambaram, to the file of the District Munsif Court-cum-Judicial Magistrate's Court, Parangipettai and the same was dismissed. The learned counsel for the respondent further contended that the petitioner has filed both Tr.C.M.P. and Crl.O.P. only to harass the respondent. The respondent has no objection to transfer M.C.No.6 of 2013 under the Domestic Violence Act, pending on the file of the Judicial Magistrate's Court No.II, Chidambaram, to the file of the XVII Metropolitan Magistrate's Court, Saidapet, Chennai.

7. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the petitioner has filed M.C.No.6 of 2013 under the Domestic Violence Act, for maintenance, before the Judicial Magistrate's Court No.II, Chidambaram, while she was residing at Chidambaram. The respondent has filed H.M.O.P.No.58 of 2016 for divorce against the petitioner, on the file of the Sub Court, Chidambaram. Now the petitioner has left Chidambaram, where she was residing with her relative and came to Ambattur, Chennai to reside with her mother along with her minor daughter. The contention of the learned counsel for the petitioner that the petitioner is finding it very difficult to travel from Chennai to Chidambaram to attend the H.M.O.P. as well as maintenance case, as her minor daughter is under the custody of aged mother, who is unable to look after the minor daughter, has considerable force.

9. Considering the above contentions of the learned counsel for the petitioner as well as respondent and well settled judicial pronouncement of the Hon'ble Supreme Court in the Judgments reported in 2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another], the convenience of the wife must be given preference in the matrimonial proceedings. Further, as per the provisions of the Hindu Marriage Act, place of residence of wife must be taken into account. Based on the Order dated 09.12.2011 made in Tr.C.M.P.No.733 of 2011 (Selin Raja alias Maria Selin Raj) and judgment of the Hon'ble Apex Court reported in (2014) 10 SCC 736 (Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and another), M.C.No.6 of 2013 can also be withdrawn, to be tried by Principal Family Court, Chennai.

10. Accordingly, both the Transfer Civil Miscellaneous Petition and Criminal Original Petition are ordered. The petition in H.M.O.P.No.58 of 2016 is ordered to be withdrawn from the file of the Sub Court, Chidambaram and transferred to the file of the Principal Family Court, Chennai, to be tried along with O.P.No.1115 of 2017 filed by the petitioner. Similarly, the petition in M.C.No.6 of 2013 is ordered to be withdrawn from the file of the Judicial Magistrate's Court No.II, Chidambaram and transferred to the file of the Principal Family Court, Chennai. The learned Subordinate Judge, Chidambaram, is directed to transmit all the records pertaining to H.M.O.P.No.58 of 2016 to the file of the Principal Family Court, Chennai and the learned Judicial Magistrate No.II, Chidambaram, is directed to transmit all the records pertaining to M.C.No.6 of 2013 to the file of the Principal Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order. The learned Principal Judge, Family Court, Chennai, is directed to dispose of all the three cases viz., M.C.No.6 of 2013, H.M.O.P.No.58 of 2016 and O.P.No.1115 of 2017 jointly in order to avoid multiplicity of proceedings and conflicting judgments. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge, Chidambaram.
 - 2.The Judicial Magistrate No.II, Chidambaram.
 - 3.The Principal Judge, Family Court, Chennai.
- +1cc to Mr.K.A.Mariappan, Advocate Sr.40553

Tr.C.M.P. No.378 of 2017
and C.M.P.No.7386 of 2017

srg 13/07/2018