

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.2587 of 2018

and

Crl.M.P.No.1077 of 2018

Shanmugam

...

Petitioner

Vs

1.Shalini

2.Minor Deekshana

rep by mother and

next friend first respondent

...

Respondents

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to withdraw the M.C.No.23 of 2017 pending on the file of the Judicial Magistrate Court, Cheyyar and consequently transfer the M.C.No.23 of the 2017 from Judicial Magistrate Court, Cheyyar to the Sub Court, Tambaram.

For Petitioner : Mr.R.Murugesan

For R1 : Mr.K.G.Senthil Kumar

For R2 : No Appearance

ORDER

The relief sought for in this petition is to transfer the M.C.No.23 of the 2017 from Judicial Magistrate Court, Cheyyar to the Sub Court, Tambaram.

2. Shalini got married to Shanmugam on 12.11.2014 and have one female child, the 2nd respondent Deekshana through the marriage. Their marriage ran into rough weather, resulting in the couple getting estranged. Shalini filed a case under Section 125(1) Cr.P.C in M.C.No.23 of 2017 before the Judicial Magistrate Court, Cheyyar, claiming maintenance for herself and her minor child. While so, Shanmugam initiated divorce proceedings in HMOP NO.598 of 2017 before the Sub Court, Tambaram and the same is pending. Under such circumstances, Shanmugam has filed the present application for transfer of M.C.No.23 of 2017 from the Judicial Magistrate, Cheyyar to the Sub Court, Tambaram, to be heard along with H.M.O.P.No.598 of 2017.

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

4. The learned counsel for the petitioner placed strong reliance on the judgment of the Hon'ble Supreme Court, in Y. Abraham Ajith & Ors. vs. Inspector of Police, Chennai & anr., reported in (2004) 8 SCC 100. The law laid down in Abraham (supra), arose in a criminal prosecution under Section 498-A and 406 IPC and the issue before the Supreme Court was the interpretation of Sections 177 and 178 Cr.P.C. However, in matrimonial proceedings under Section 125 Cr.P.C., Sections 177 and 178 Cr.P.C., will not apply since Section 126 is a self contained provision, which lays down the territorial jurisdiction for entertaining a maintenance application under Section 125 Cr.P.C. In this case, Shalini is living with her minor child within the jurisdiction of Judicial Magistrate, Cheyyar and that apart the Sub Court, Tambaram cannot be conferred with the jurisdiction to take up the case under Section 125 Cr.P.C because the Sub Court is a Civil Court and not a Criminal Court.

5. Therefore, this Criminal Original petition is dismissed. Consequently, the connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vum/avr

To

1.The Judicial Magistrate Court,
Cheyyar.

2. The Public Prosecutor
High Court, Chennai.

+1 cc to Mr.R.Murugesan Advocate sr 25399

+1 cc to Mr.K.G.Senthilkumar Advocate sr 25074

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and

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