



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :18.01.2018

Pronounced on:27.02.2018

WEB COPY

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THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CrI.O.P.(MD) No.13707 of 2017

and

CrI.M.P.(MD).No.9229 of 2017

R.Vembu

... Petitioner/Petitioner

-Vs-

Bhuvaneswari

... Respondent/Respondent

Prayer: Criminal Original petition filed under Section 407 of Code of Criminal Procedure, to transfer the case in Cr.M.P.No.1361 of 2017 in M.C.No.11 of 2003 on the file the Chief Judicial Magistrate, Thanjavur at Kumbakonam to any other competent Judicial Magistrate Court, situated in another District.

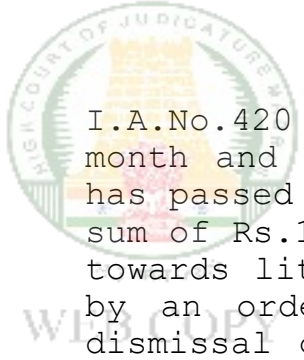
For Petitioner : Mr.M.Suri
For Respondent : Mr.S.Gokulraj

O R D E R

This Criminal Original petition has been filed to transfer the case in Cr.M.P.No.1361 of 2017 in M.C.No.11 of 2003 from the file the Chief Judicial Magistrate, Thanjavur at Kumbakonam to any other Court, situated in another District.

2.Heard both sides.

3.The learned counsel for the petitioner has submitted that the petitioner is the husband and the respondent is the wife and their marriage was solemnized on 04.12.1989 and they have lived together hardly for 7 months and thereafter, she left the matrimonial home on 12.07.1990. In spite of sincere efforts taken by the petitioner to bring back the respondent, the respondent refused to live with the petitioner. After exchange of notices, the respondent herein has filed a divorce petition in H.M.O.P.No.65 of 1993 on the file of the Sub-Court, Kumbakonam, in which, the petitioner herein has filed a detailed counter. The respondent herein did not pursue the said case for several years and hence, it was dismissed for default on 05.09.2000. During pendency of the said H.M.O.P., the respondent herein has filed an application in

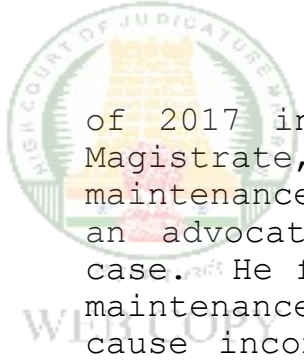


I.A.No.420 of 1993, claiming interim maintenance of Rs.3,000/- per month and Rs.800/- towards litigation expenses and the trial court has passed an order on 11.08.1994, directing the petitioner to pay a sum of Rs.1,120/- towards interim maintenance per month and Rs.400/- towards litigation expenses and the same was affirmed by this Court by an order dated 08.12.1998. He further submitted that after dismissal of the H.M.O.P.No.65 of 1993 for default, the petitioner herein has filed a divorce petition on the file of the Sub-Court, Virudhunagar and the same was transferred to the Principal Sub-Court, Trichy and numbered as H.M.O.P.No.36 of 2002, in which a decree of divorce was granted on 13.09.2010.

4.The learned counsel for the petitioner further submitted that the respondent herein has filed a petition under Section 125 of Cr.P.C, claiming maintenance in M.C.No.11 of 2003 on the file of the Chief Judicial Magistrate, Thanjavur at Kumbakonam, wherein, it was ordered that the petitioner has to pay a sum of Rs.2000/- per month towards maintenance to the respondent. Aggrieved over the said order, the respondent herein has filed CrI.R.C.(MD).No.26 of 2004 before this Court and this Court has passed an order to enhance the maintenance from Rs.2,000/- to Rs.3,000/- by the order dated 08.06.2007. As on date, there is no arrears of maintenance. When the fact remains so, the respondent herein has filed a case alleging that the petitioner herein has committed an offence under Section 494 of I.P.C and based on that, the case was taken on file in C.C.No.415 of 2013 on the file of the Chief Judicial Magistrate, Kumbakonam. In that case, the petitioner and other accused were acquitted on 12.11.2005. Thereafter, the respondent herein has filed CrI.A.(MD).No.228 of 2006 before this Court and the same was dismissed on 08.10.2012. Now, the respondent herein has filed a petition under Section 127 of Cr.P.c and the same was taken on file in Cr.M.P.No.1361 of 2017 in M.C.No.11 of 2003 on the file of the Chief Judicial Magistrate, Thanjavur at Kumbakonam, seeking for enhancement of maintenance from Rs.3,000/- to Rs.50,000/- per month.

5.The learned counsel for the petitioner further submitted that the respondent herein has completed Law Degree course and practising as an advocate at Kumbakonam. Since she is practising at Kumbakonam, if the aforesaid case is conducted before the Chief Judicial Magistrate, Thanjavur at Kumbakonam, the petitioner apprehends that he may not get justice and hence, he requests to transfer Cr.M.P.No.1361 of 2017 in M.C.No.11 of 2003 from the file of the Chief Judicial Magistrate, Thanjavur at Kumbakonam to any other Court, situated in another District. In support of his contention, he relied upon the decision in **Renuga Devi Vs. Superintendent of Police** reported in **(2017) 4 MLJ (CrI.) 5**.

6.The learned counsel for the respondent has submitted that the respondent is not having sufficient income and the sum of Rs.3,000/-, which was awarded by this Court in CrI.R.C.(MD).No.26 of 2004 in the year 2007 is not sufficient for her basic needs. Hence, she has filed a petition under Section 127 Cr.P.C in Cr.M.P.No.1361



of 2017 in M.C.No.11 of 2003 on the file of the Chief Judicial Magistrate, Thanjavur at Kumbakonam, seeking to enhance the maintenance amount. Merely because the respondent is practising as an advocate, the petitioner cannot seek transfer of maintenance case. He further submitted that the respondent being a lady, if the maintenance case is transferred to some other District, that would cause inconvenience to her to go to that Court and therefore, he strongly opposed this petition. He further submitted that in the case of **Renuga Devi Vs. Superintendent of Police (supra)**, the Bar Association has passed a resolution that no advocate shall appear for the particular person, but in this case, it is not the case of the petitioner that the Bar Association of Kumbakonam has passed any such resolution and as such, the said decision will not apply to the facts of the case. He has also filed written arguments.

7. In the case of **Renugadevi Vs Superintendent of Police (cited supra)**, based on the complaint given by one advocate , practising in Coimbatore, a case was registered in Cr.No.1565 of 2011 under Sections 323, 324 and 326 I.P.C against the police personnel and charge-sheet has been filed in C.C.No.114 of 2012. Likewise, one Woman Police attached to the Karamadai Police Station also gave a complaint against the advocate and others and based on that, a case has been registered in Cr.No.1564 of 2011 and subsequently, charge-sheet has been filed and case has been taken on file in C.C.No.115 of 2012 on the file of the Chief Judicial Magistrate, Coimbatore. The woman police Constable , who is the defacto-complainant in C.C.No.115 of 2012 has filed Crl.O.P.Nos.14695 and 14680 of 2012 before this Court at Principal Seat under Section 407 Cr.P.C to transfer the cases in C.C.Nos.114 and 115 of 2012 to some other District. In those cases, it was argued on behalf of the petitioner that under Section 303 of Cr.P.C, she has right to engage a counsel on her choice and since no advocate has come forward from Coimbatore Bar to conduct her case, she was forced to engage a counsel from neighbouring District and the atmosphere at Coimbatore was not conducive for conducting fair trial. Considering the aforesaid submissions, this Court allowed those petitions and transferred the cases in C.C.Nos.114 and 115 of 2012 from the file of the Chief Judicial Magistrate, Coimbatore to the Chief Judicial Magistrate, Thiruppur. In the case on hand, as rightly contended by the learned counsel for the respondent that the petitioner has not stated in his petition that since the respondent is practising as an advocate at Kumbakonam, the advocates who are practising at Kumbakonam are not coming forward to defend the petitioner. Therefore, the aforesaid decision will not apply to the facts of this case.

8. According to the petitioner, the respondent herein is practising as an advocate in the Courts at Kumbakonam and if the aforesaid maintenance case is allowed to conduct in the Court of the Chief Judicial Magistrate at Kumbakonam, he apprehends that the enquiry may not be conducted in a fair manner.



9.It is immaterial that the respondent herein is an Advocate. All are equal before the law. So far as Court is concerned, she is a party to the proceedings like any other persons. There is no basis for the petitioner's apprehension. No one can influence the Court. Therefore, I do not find any merit in this petition.

10.In the result, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The Chief Judicial Magistrate,
Thanjavur at Kumbakonam.

+ 1 CC TO Mr.S.GOKULRAJ, ADVOCATE IN SR No. 51795
+ 1 CC TO Mr.M.SURI, ADVOCATE IN SR No. 51689

VS
TE/KKR/SAR-3 : 13/03/2018 : 4P/4C

order made in
Crl.O.P.(MD) No.13707 of 2017 and
Crl.M.P.(MD).No.9229 of 2017
27.02.2018