



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.07.2018

Pronounced on : 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Tr.C.M.P. (MD)No.284 of 2018 and

CMP (MD)No.7062 of 2018

P.Ragupathi

... Petitioner/1st Respondent

-vs-

1.A.Subasri

... 1st Respondent/Petitioner

2.Selvi dhanam

... 2nd Respondent/2nd Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the case in H.M.O.P.No.72 of 2018 pending on the file of learned Family Court, Karur, Karur District to transfer the same to the file of any of the competent Court in the Dindigul, Namakkal or any other District.

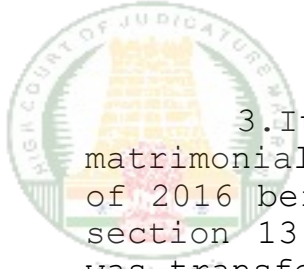
For Petitioner : Mr.C.M.Arumugam

For Respondents : Mr.Balakrishnan (for R1)
for Mr.N.Sudhagar Nagaraj

O R D E R

The instant Transfer Civil Miscellaneous Petition is preferred by the husband who is the respondent in a Hindu Marriage Original Petition HMOP.No.72 of 2018, filed by his wife, pending on the file of the learned Family Court Judge, Karur to any other competent Court in Dindigul, or any other District.

2.The reasons adduced in the affidavit filed along with the Tr.C.M.P(MD)No.284 of 2018 are that his marriage was solemnized with the respondent/wife on 29.04.2007 at Prem Mahal, Karur District as per the Hindu rites and customs. Out of the lawful wedlock, the couples were blessed with a male child on 18.05.2008. At the time of their marriage, his wife was practicing in Karur District Courts as Advocate. Thereafter she got through her exam for the post of Assistant Public Prosecutor in the year 2014 and got appointment in the year 2015 and presently she is serving as Assistant Public Prosecutor Grade-II in a Judicial Magistrate Court, Namakkal District.



3. It is added further that as there were differences in their matrimonial life, his wife filed a divorce petition in HMOP.No.237 of 2016 before the learned Principal Subordinate Judge, Karur under section 13(1)(i), (i-a) & (i-b). Pending proceedings the said case was transferred to the file of learned Family Court Judge, Karur and was re-numbered as HMOP No.72 of 2018 as per the proceedings of the learned Principal District Judge, Karur vide A.No.06/18/2018/A1 dated 24.01.2018. Thereafter the witness examination was commenced on 23.03.2018, but during the course of cross examination, the petitioner was constrained to face hurdles. Further, much trouble was given to him and his advocate not only by the respondent/wife, but the surrounding atmosphere was not conducive to have a meaningful trial. The father of the respondent/ wife is an advocate practicing in the very same Karur District Courts and the Counsel appearing on behalf of the wife is the Government Pleader. The petitioner is all along being kept under panic and virtually he is not able to conduct his case in a free manner without any fear, therefore he prays this Court to transfer the case in HMOP No.72 of 2018 to any other competent Court of any District.

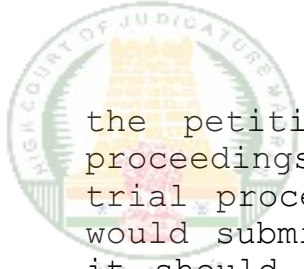
4. Per contra, the learned Counsel for the respondent/ wife contended that the allegations leveled in the affidavit filed along with the petition for transfer are false and the case is pending from the date of filing that is from the year 2016. When the petitioner is able to conduct the case from 2016 without any such allegation against the wife, it can be ascertained that the alleged hardships he is facing is imaginary and nothing more. He has brought to the attention of this Court that already the wife filed a Civil Revision Petition in CRP(MD)No.1418 of 2018 for the speedy disposal of the HMOP.No.72 of 2018 before this Court and by appreciating the reasons adduced therein, this Court has inclined to pass an order to dispose the said civil revision petition within a period of 2 months. Further, he has also pointed out that the wife has extended her fullest co-operation to dispose of the case as per the direction of this Court without any deviation.

5. To support his contention the learned counsel for the respondent has relied on a judgment reported in (2016) 4 CTC 488 and 2016 (2) TLNJ 140 (civil). By relying on these judgments, the learned counsel for the respondent has appealed that the convenience of woman is the paramount consideration in deciding such petition for transfer and therefore, he prays for the dismissal of the transfer petition.

6. I heard Mr.C.M.Arumugam, learned counsel for the petitioner and Mr.Balakrishnan for Mr.N.Sudhagar Nagaraj, learned counsel for the 1st respondent and perused all the materials available on record.

<https://hcservices.ecourts.gov.in/hcservices/>

7. It is the specific contention of the learned counsel for

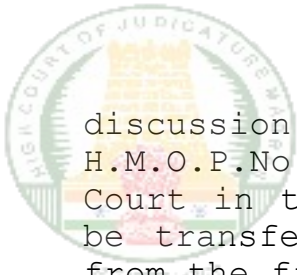


the petitioner that it is equally important to have the trial proceedings without any fear as that of complete fairness in the trial proceedings. Further, the learned counsel for the petitioner would submit that as far as the judicial proceedings is concerned, it should be conducted in all fairness, it includes that no panic shall be caused upon the minds of either parties in any manner. In the instant case an affidavit is filed by the petitioner/husband that he is prevented from conducting his case without fear. Further, the respondent/wife is an Assistant Public Prosecutor Grade-II in Judicial Magistrate Court, Namakkal. At the same time, the further submission is that father of the respondent/wife is an advocate practicing in the Karur District Courts. The learned Counsel appears on behalf of respondent/wife is presently serving as a Government Pleader also in Karur District Court. However, the contention of the learned counsel for the petitioner/husband that the father of the respondent/wife is an advocate and she is being defended by a Counsel who is a Government Pleader also shall one way or other cause influence the minds of the Presiding Officer of the Court concerned can't be accepted.

8. At the same time, this Court finds justification that the reason for seeking transfer is also for the purpose that the petitioner/husband was not only prevented to conduct his case in a free manner. But, he was subjected for moral threat during the Court proceedings. This aspect is to be taken up for consideration. Moreover, the petitioner/husband has not chosen any particular Court to which the H.M.O.P. is to be transferred.

9. Undoubtedly the party who approaches the Court shall be at liberty to conduct the proceedings without fear in any manner. In this connection the reasons adduced in the affidavit filed along with transfer petition is fit for consideration. At the same time, the learned Counsel for the respondent/wife would contend that the proceedings before the learned Family Court, Karur is being conducted in an impartial manner. On the other hand, he has not opposed the contention of the learned Counsel for the petitioner/husband that the husband was virtually placed under mental threat and panic is created in the minds of the Petitioner/Husband during the Court proceedings. On the other hand, it is to be justified that all the judicial proceedings must be conducted in accordance with law absolutely without any substance of panic or threat in the minds of the parties concerned.

10. Further, to transfer the H.M.O.P.No.72 of 2018 to any other competent Court in the nearby Districts, no prejudice will be caused on either party. Though this Court is of the view that the convenience of the woman in participating in the judicial proceeding is the paramount consideration, the same has to be pushed back to the important aspect of conduction of judicial proceedings without any kinds of fear in the minds of the parties. So, for the foregoing



discussion this Court is of the considered view that the H.M.O.P.No.72 of 2018 shall be transferred to any of the competent Court in the nearby District. Thus the H.M.O.P.No.72 of 2018 shall be transferred to the file of the learned Family Court, Dindigul from the file of the Learned Family Court, Karur.

WEB COPY

11. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and the aforesaid H.M.O.P.No.72 of 2018 on the file of the learned Family Court, Karur is hereby withdrawn and the same is transferred to the file of the learned Family Court, Dindigul. Further, the Family Court, Dindigul is directed to dispose the said H.M.O.P.No.72 of 2018 at the earliest preferably within a period of three months from the date of receipt of a copy of this order. The parties are hereby directed to extend their fullest co-operation for the speedy disposal of the case without causing any kind of panic in the minds of either party in any manner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Judge, Family Court, Karur.
2. The Judge, Family Court, Dindigul.

VSV

TE/SKN/SAR-2 : 11/09/2018 : 4P/3C

order made in
Tr.C.M.P. (MD) No.284 of 2018 and
CMP (MD) No.7062 of 2018
23.08.2018