

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 09.04.2019
CORAM
THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5497 of 2019
and
Crl.M.P.No.3132 of 2019

Shalini Gupta

... Petitioner

Vs

Selva Datchnamoorthy

.. Respondent

Prayer:

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to withdraw and transfer D.V.C.No.8 of 2016, pending on the file of IV Judicial Magistrate Court, Pondicherry for being tried and heard along with C.M.A.No.3 of 2018, on the file of Family Court at Cuddalore.

For Petitioner : Mr.John Zachariah
for M/s. Fox Mondal Associates

For Respondent : Mr.P.Sankara Narayanan

O R D E R

This Criminal Original petition has been filed by the petitioner seeking to transfer in D.V.C.No.8 of 2016, pending on the file of IV Judicial Magistrate Court, Pondicherry, for being tried and heard along with C.M.A.No.3 of 2018 on the file of Family Court, Cuddalore.

2. The marriage between the petitioner and the respondent was solemnized on 02.09.2011 in TVM Thirumana Mandapa as per the Hindu rites, customs and traditions. The respondent lived with the petitioner only for one week and left away the matrimonial home within one week and inflicted all sorts of cruelty against the petitioner. The petitioner was put to cruelty always in front of his friends and relatives and the respondent neglected and deserted the petitioner and went away from the family deliberately. The respondent refused to return to the matrimonial home. Thereafter, the respondent deserted her and left to Singapore. The respondent did not continue his conjugal life with her and the petitioner was constrained to file M.O.P.No.357 of 2015 before the Family Court, Pondicherry, for

restitution of conjugal rights, and the same is still pending. Subsequently, the petitioner had also filed an application in D.V.C.No.8 of 2016 before the learned Judicial Magistrate No.IV, Pondicherry, under section 12 of the Protection of Women from Domestic Violence Act, 2005, along with an interim application for maintenance and the same is also pending. The respondent herein, for his part filed H.M.O.P.No.40 of 2013 on the file of the Principal Sub Judge, Cuddalore, for divorce and the same was decreed passed by the Principal Sub Judge, Cuddalore, dated 19.01.2017. Thereafter, the petitioner had filed in C.M.A.No.3 of 2018 before the learned Principal District Judge, Cuddalore, against the impugned order, dated 19.01.2017 passed in H.M.O.P.No.40 of 2013 granting divorce. The CMA is also pending in Cuddalore District and also the respondent is contesting it. The respondent did not appear before the Family Court, Pondicherry, taking advantage of the impugned order of divorce that was passed by the Court below at Cuddalore. However, the respondent is visiting in Cuddalore District and pursuing the appeal. The petitioner is facing many difficulties in conducting the cases, both at Pondicherry and Cuddalore and she appeared on a regular basis both at Pondicherry and Cuddalore Courts, as before the Family Court. As considerable time and money is spent by her on making arrangements to appear before both the Courts at Pondicherry and Cuddalore. Hence, the petitioner prayed that the matters filed by her be transferred to Cuddalore and she is willing to go to Cuddalore to pursue the matters. Hence this petition.

3. Heard Mr.John Zachariah, learned counsel appearing for the petitioner and Mr.P.Sankara Narayanan, learned counsel appearing for the respondent and also perused the materials available on record.

4. The learned counsel appearing for the respondent submitted that the complaint in D.V.C.No.8 of 2016, pending on the file of IV Judicial Magistrate Court, Pondicherry, cannot be considered before the Family Court, Cuddalore, as contemplated under Section 27(i) (b) of the Act.

5. Considering the facts and circumstances of the case, and the averments set out in the petition, this Court is inclined to allow the Criminal Original Petition in the following manner:

(i) The complaint in D.V.C.No.8 of 2016, pending on the file of IV Judicial Magistrate Court, Pondicherry is hereby withdrawn and the same is ordered to be transferred to the learned Judicial Magistrate No.I, Cuddalore District.

(ii) The learned Judicial Magistrate No.IV, Pondicherry, is directed to transmit the case bundle to the learned Judicial Magistrate No.I, Cuddalore, within a period of one month from the date of receipt of a copy of this order.

(iii) On receipt of the entire bundle, the learned Judicial Magistrate-I, Cuddalore is directed to complete the trial within a period of three months from the date of receipt of the entire bundle, on merits and in accordance with law, after affording sufficient opportunity to both sides.

(iv) Both the parties are directed to co-operate the learned Judicial Magistrate No.I, Cuddalore for disposal of the case within the time specified supra.

6. With the above directions, this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msm

To

1. The IV Judicial Magistrate Court, Pondicherry.

2.do Thro Chief Judicial Magistrate,
Cuddalore.

3.The Judicial Magistrate No.1,
Cuddalore.

4.do Thro Chief Judicial Magistrate,
Cuddalore.

+1cc to M/s. Fox Mondal Associates, Advocate sr.35058

+1cc to Mr.P.Sankara Narayanan, Advocate sr.34988

Cr1.O.P.No.5497 of 2019

nr 18/06/2019