

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.09.2019

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr. C.M.P. No. 567 of 2019
and C.M.P.No.15958 of 2019

Nithiya

... Petitioner

-vs-

Karthik

... Respondent

Prayer : Petition filed under Section 24 of C.P.C to withdraw the Petition in F.C.O.P.No.50 of 2019 from the file of Family Court, Ariyalur and transfer the same to the Family Court, Chennai.

For Petitioner : Mr.K.Balaji

For Respondent : Mr.Sudit Anant Palande

O R D E R

The Transfer C.M.P. has been filed by the petitioner / wife to withdraw the petition in F.C.O.P.No.50 of 2019 from the file of Family Court, Ariyalur and transfer the same to the Family Court, Chennai.

2. In the affidavit filed in support of the petition, the petitioner has stated that the marriage between herself and the respondent took place on 16.02.2017, as per Hindu Religious Rites and Customs at Geetha Thirumana Mandapam, Ariyalur. As the same was an arranged marriage, seethana of 35 Sovereigns of gold were given during the marriage and both of them are working in a software company. Out of the wedlock a male child was born on 08.11.2017, namely, Harshid and matrimonial dispute arose between them. The petitioner further avers that the respondent would spend all his money to his family members only and he would often quarrel with the petitioner using filthy language, which would tarnish her character. Frequently, the respondent used to pickup quarrel and attack the petitioner, for which a complaint was also given in Selaiyur Police Station by the petitioner and finally, the respondent had driven out the petitioner from the Matrimony home along with the child and

thereafter, in the month of February 2018, the respondent has also sent a legal notice.

3. It is further stated by the petitioner in the affidavit filed in support of the petition that after the intervention of family members and well wishers, there was a compromise talk, thereafter, the petitioner and the respondent had re-united in the month of December 2018 and they started living in a separate house at Ellaimman Koil Street, Kotturpuram, near her parents house. But, the respondent had not even taken least care of the petitioner and child and whenever, the petitioner demands a meager money for livelihood, the respondent used to pickup a quarrel and attack the petitioner, therefore, the petitioner was forced to come out of matrimonial home and thereafter, a complaint was again lodged before the Inspector of Police, All Women Police Station, Mylapore and the police also advised the respondent, but there is no response.

4. Apart from the above, it is stated in the affidavit filed in support of the petition that the petitioner and the respondent have resided together at Chennai and the respondent is also presently working at Chennai, however, in order to harass the petitioner, the respondent has filed a petition for divorce in his native place, viz., Ariyalur, which is 300 kms away from Chennai, where only the marriage took place. Apart from that, the petitioner is having a young child and her aged parents cannot often accommodate her during the trial and if the case is transferred to Chennai, it will be convenient for the petitioner to attend the hearing.

5. A detailed counter affidavit is filed by the respondent / husband wherein it is stated that the petitioner used to spend all the money to her family members and till date, he does not know even the salary of the petitioner. While the petitioner and the respondent were residing at East Tambaram, the petitioner's cousin brother, namely Senthil visited the petitioner, picked up the quarrel with the respondent and beaten him and when his father underwent a surgery on 01.01.2018, the respondent's brother had paid the hospital bill through medical insurance and the petitioner misunderstood that the respondent had wasted all his savings by paying the medical bill. Also, on 09.02.2018 at about 7.00 p.m., the petitioner along with her cousin brother Senthil and 10 relatives came to the house of the respondent and started fighting and in such altercation, the respondent / husband was beaten up with stick and there was a bleeding in his nose. Thereafter, he has went to Government Hospital, Tambaram and took treatment for the injuries. In

consequence, the respondent went to Selaiyur Police Station at about 11.00 p.m., to lodge a complaint about the incident, but the police advised him to come in the morning and on the next day, the petitioner lodged a complaint against the respondent about the incident and the police refused to take up the complaint by the respondent stating that it was a family affair and advised to live separately from the petitioner.

6. It is further averred in the counter filed by the respondent that on 24.02.2018, the petitioner, immediately came along with her advocate and one constable from the Selaiyur Police Station took away all her things from the matrimonial home and gave a letter acknowledging the receipt of all the articles. The respondent, through his advocate, sent a notice calling upon the petitioner to return to the matrimonial home, but, the petitioner / wife did not return to matrimonial home or sent any response. Further, the respondent and his parents went to the petitioner's house and requested her to come to the matrimonial house, but the petitioner's mother asked us to leave the house.

7. Apart from the above, it is stated in the counter affidavit filed by the respondent / husband that the petitioner and himself started to stay separately in a house at Kotturpuram, at that time, the said Senthil visited the house and picked up a big fight and threatened that he would attack the respondent and when the same was questioned, the petitioner got upset and lodged a complaint with the police station in Kotturpuram. Thereafter, said police sent us for counselling and after counselling, she was living happily. On the ill advise of petitioner's mother, the petitioner again lodged a complaint with All Women Police Station, Mylapore. The said police conducted enquiries for four days, but the petitioner refused to return to the matrimonial home. Thereafter, the respondent went to his native town and the petitioner came to kotturpuram and took all her belongings from the house and they did not give any acknowledgement for having received all her things from the matrimonial home.

8. It is also stated in the counter filed by the respondent that the petitioner had approached the respondent and his parents and well wishers for re-union and the respondent refused to accept the petitioner back into the matrimonial home, because of the reason that it was his family members, who repeatedly approached the petitioner's family members for re-union, but every time, the petitioner and her family members said that they wanted divorce and that the petitioner was not prepared to reunite with the respondent. Also, the petitioner is financially well settled and that when the respondent approached the petitioner's close relatives, they abruptly refused to interfere

in the matter by stating that the petitioner's family will not listen to any one and that they will just act according to their whims and fancies. If the petitioner really decided to reunite with the respondent, the petitioner would have returned to the matrimonial home on receipt of the legal notice from the advocate of the respondent. Also, the petitioner would not have taken back all her things from the matrimonial home on 23.02.2019. The petitioner or her parents, did not approach the respondent or his parents even once for re-union.

9. It is further stated in the counter affidavit filed by the respondent that the petitioner's brother, viz., Senthil had openly threatened the respondent that he will beat the respondent and the said Senthil had also beaten the petitioner, but, the police has not taken any action against the petitioner or her cousin brother. The respondent further states in the counter that he is apprehensive of appearing before the Family Court in Chennai for the reason that the petitioner and her cousin brother would cause him bodily injury, at the time of attending the case, hence, submits to retain the case at Ariyalur itself and prays for dismissal of the present petition.

10. Heard the learned counsel on either side and perused the documents placed on record.

11. Upon perusing the documents filed by the petitioner as well as the respondent, this Court is inclined to accept the contention of the petitioner/wife, because of the reason that since the petitioner is having two year old child and residing at chennai, it will be very difficult for her to attend the court proceedings at Ariyalur, other than that, she has got no relatives at Ariyalur and her age old parents cannot accompany her during court proceedings.

12. Accordingly, the present Tr.C.M.P. Is allowed and the Petition in F.C.O.P.No.50 of 2019 is withdrawn from the file of Family Court, Ariyalur and the same is transferred to the Family Court, Chennai. Further, on the 1st hearing date, the Principal Judge, Family Court, Chennai is directed to fix the date and time for the parties to appear for counselling. Consequently, connected Miscellaneous petition is closed. No costs.

13. Before parting with the case, taking note of the counter filed by the respondent and the apprehension put forth by the learned counsel for the respondent that the respondent may be harmed by the petitioner's relative, this Court, directs the parties not to harm each other and if the respondent feels that there is apprehension, he is at liberty to lodge a complaint before the Inspector of Police, Esplanade Police station in the High Court Premises. The concerned Police is directed to act in

accordance with law and further directed not to precipitate the matter. Since the F.C.O.P.No.50 of 2019 is of the year 2019 and it is represented before this Court that the petitioner has not filed any counter, the petitioner is directed to file counter, if any, within a period of three weeks from today. Both the parties are directed to extend their fullest co-operation for early disposal of the case in F.C.O.P.No.50 of 2019 without fail.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd

To

1. The Judge, Family Court, Ariyalur
2. The Judge, Family Court, Chennai.
3. The Principal Judge, Family Court, Chennai
3. The Inspector of Police, Esplanade Police Station,
High Court Premises, Chennai

+1 CC to Mr.K.Balaji, Advocate sr 78335.

Tr. C.M.P. No. 567 of 2019
and C.M.P.No.15958 of 2019

RSI(CO)
SP(07/11/2019)