

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE BHAVANI SUBBAROYAN

TR C.M.P.NO.602 OF 2019

AND

C.M.P.NO.17287 OF 2019

Priyadharshini

... Petitioner

Vs.

Vijayakumar

... Respondent

PRAYER:

Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the case filed in HMOP. No.61 of 2019 before the learned Principal Subordinate Judge, Virudhachalam and transfer to the Principal Subordinate Judge, Thirupathur, Vellore District.

For Petitioner : Mr.J.Brezhnew

For Respondent : Mrs.P.Lakshmidevi

O R D E R

This Transfer Civil Miscellaneous Petition has been filed seeking to withdraw the case filed in HMOP. No.61 of 2019, before the learned Principal Subordinate Judge, Virudhachalam and transfer to the Principal Subordinate Judge, Thirupathur, Vellore District.

2. The Respondent and the petitioner are husband and wife. The marriage between the petitioner and the respondent was solemnized on 06.12.2009 at Shanmuga Mahalakshmi Mahal, Virudhachalam as per the Hindu rites and customs. Out of the wedlock, a male child viz., Gowtham Shatriyan was born to them in the year 2010. From the date of the marriage, the respondent has ill-treated the petitioner and demanded money and jewels from the petitioner. The respondent always abused the petitioner as if she was not a right choice for his life. After mediation of the elders of both the family, the couples were set up a rental house at Perumbakkam, Chennai to start the matrimonial life. Again, the respondent used to abuse the petitioner and

attacked her brutally. During the year 2011, the respondent and the petitioner had gone to Singapore and resided there till April 2013. After returned back to India, the respondent again started to torture the petitioner. In the year 2013, the petitioner has joined as Assistant Professor in GKM Engineering College, Chennai. For which, the respondent compelled the petitioner to resign her job. Due to which, the petitioner left the matrimonial home. In a mediation, the respondent has demanded to handover 40 sovereigns of gold jewels which was given as sridhana and Rs.5,00,000/- to continue the matrimonial life with the petitioner. Thereafter, the respondent has filed a petition in HMOP. No.154 of 2014 before the Subordinate court, Virudhachalam for restitution of conjugal rights. In the meanwhile, the petitioner has filed a maintenance case in MC. No.146 of 2015 before the learned III Additional Family Court, Chennai. During the pendency of litigations before the Court below, the respondent voluntarily came forward and tied the nuptial knot in his advocate chamber. The respondent requested the petitioner to stay in her parental home for sometime. After resolving the issues, he assured to get back the petitioner and his child to the matrimonial home. Believing his words, she went to her parental house. Subsequently, the petitioner came to know that the respondent married another woman. Immediately, she went to Chennai and found that someone addressing herself as the wife of the respondent. As the same was questioned the respondent, he attacked the petitioner brutally. For which, she was bedridden for about 6 months due to fracture made in spinal cord. A complaint has lodged against the respondent before the All Women Police Station, Poonamallee in Cr. No.10 of 2018. As a counter blast the respondent has filed a petition for divorce in HMOP. No.61 of 2018 before the Subordinate Court, Virudhachalam. The petitioner/wife is the resident of Thirupathur, Vellore District. She finds it difficult to travel from Vellore to Virudhachalam to attend the Court proceedings. Therefore, she seeks transfer of the petition filed by the husband from Virudhachalam to Vellore.

3. The learned counsel for the petitioner/wife would submit that now the petitioner is living at Thirupathur along with her aged parents. The child is under the care and custody of the petitioner. The respondent is residing with his second wife at Chennai. The respondent, voluntarily, filed a case at Virudhachalam, only to harass the petitioner. It is very difficult for the petitioner to travel from Thirupathur to Virudhachalam along with her child. If the case is transferred to Thirupathur, no prejudice would be caused to the respondent. Therefore, it will be appropriate to transfer the case filed by her husband from Virudhachalam to Thirupathur.

4. The learned counsel for the respondent/husband would submit that the respondent denied all the allegations made by the petitioner. The respondent has no proper job at the time of marriage. So that the petitioner used to pick up quarrel with the respondent for petty reasons and abused him and attacked him brutally. The petitioner used to abuse all the family members of the respondent, after they moved to Perumbakkam. During the year 2011, the respondent got a job at Singapore and he moved to Singapore with his wife. When the respondent was employed at Singapore, the petitioner insisted him to send his salary to her parents account. In the year 2013, the couple were came back to India and stated to live in Chennai. Again, the respondent left to Qatar, because of his new job. At that time, the petitioner stayed at Chennai along with his son and her parents. At that time also the respondent compelled the respondent to send his salary to the petitioner's parents accused. The respondent has also transacted around a sum of Rs.40,00,000/- to the petitioner's parents accused.

5. The learned counsel would further submit that when the respondent asked about the money, the petitioner quarreled with him and left the matrimonial home along with her child. Therefore, the respondent filed a petition for restitution of conjugal rights before the Subordinate Court, Virudhachalam and the petitioner has also filed a maintenance case before the II Additional Family Court, Chennai. The petitioner has filed a transfer petition in Tr.CMP. No.308 of 2015 before this Court to transfer the case filed by the husband at Virudhachalam and to try along with the maintenance case filed by her to the II Additional Family court, Chennai. After hearing the case, the Hon'ble Judge had referred the case to the Mediation Centre. But the petitioner refused to attend the mediation and filed a false complaint against the respondent and his brother before the All Women Police Station, Poonamallee. Therefore, the respondent has moved an Anticipatory Bail Petition before this Court and obtained an order in CrI.OP.No.14437 of 2015, dated 15.06.2015. Again the petitioner filed an another case before the Pallikaranai Police Station against the respondent and his family members. Again they moved an application before this Court and obtained an anticipatory bail in CrI.OP.No.16458 of 2015, dated 07.07.2015. Earlier the petitioner filed a petition in Tr.CMP.No.308 of 2015 before this Court and the same was dismissed for non-prosecution. The elders of the respondent's family has tried to pacify the petitioner for reunion for the welfare of the child. But the petitioner refused to join with the respondent. Therefore, the respondent filed a petition for divorce before the Subordinate Judge, Virudhachalam. The petitioner filed a false case against the respondent and his family members in Cr.No.10 of 2018 before the All Women Police Station, Poonamallee. So the respondent moved an anticipatory

petition before this Court in CrI.OP.No.17347 and 17856 of 2018. When these petitions were came up for hearing, the Hon'ble Judge directed the petitioner and the respondent to attend the mediation. In the mediation proceedings, the petitioner demanded the respondent for a sum of Rs.1 Crore to withdraw all the proceedings against him. Therefore, the mediation ended in failure. The Hon'ble Judge ordered an anticipatory bail to the respondent and his family members.

6. Further the learned counsel for the respondent would submit that the with an intention, the petitioner is to grab money from the respondent, to harass him by multiple criminal proceedings. If the case is transfer to Viridhachalam to Thirupathur, it may cause serious harm to the respondent's life. The petitioner's family is having money and muscle power. Therefore, it is very hard and dangerous for the respondent to appear before the Thirupathur Court. Hence, the respondent prays to dismiss this petition filed by the petitioner.

7. Heard the learned counsel for the petitioner as well as the respondent and also perused the materials available on record.

8. It is seen from the records that both the petitioner and the respondent have filed two different proceedings in two different places. The learned counsel for the petitioner submitted that the maintenance case was filed by the petitioner before the Family Court, Chennai and the same was dismissed for non prosecution. Now, the petitioner is pursuing to file the restoration petition for restoring the maintenance case and she has no objection for transferring the case to the Family Court, Chennai, where the maintenance was dismissed for non prosecution.

9. The learned counsel for the respondent has also submitted that the respondent is ready to cooperate with the proceedings, if the case is transferred from Virudhachalam to Chennai Family Court.

10. Considering the averments made in the affidavit and counter affidavit filed in support of this petition and the facts of circumstances of the case, this Court feels that it would be appropriate to withdraw HMOP. No.61 of 2019 pending on the file of the Principal Subordinate Judge, Virudhachalam and transfer the same to the file of anyone of the Family Court, Chennai.

11. Accordingly, the Transfer Civil Miscellaneous Petition is allowed and HMOP. No.61 of 2019 pending on the file of the Principal Subordinate Judge, Virudhachalam is to be withdrawn

and transferred to anyone of the Family Court, Chennai. No costs. Consequently, connected miscellaneous petition is closed.

12. Both the parties are directed to maintain discipline and decorum before the Court below and also cooperate with the Court proceedings for speedy disposal.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge, Virudhachalam.
2. The Judge, Family Court,
Chennai.

+1cc to Mrs.P.Lakshmidhevi, Advocate, S.R.No.87660

+1cc to Mr.J.Brezhnew, Advocate, S.R.No.86948

TR.C.M.P.No.602 of 2019
and
C.M.P.No.17287 of 2019

NMI (CO)
CS/28/11/2019