

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

TR.C.M.P.No.805 of 2019

B.Thamilharasi

... Petitioner

Vs.

D.Vinodh

... Respondent

Prayer: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the O.P.No.13 of 2019 pending on the file of the Sub Court, Tambaram and transfer the same to the file of the Family Court, Chennai.

For Petitioner : Mr.Venkatesh Mahadevan

For Respondent : Mr.S.Prasath

O R D E R

This Transfer Civil Miscellaneous Petition has been filed seeking for transfer of O.P.No.13 of 2019 pending on the file of the Sub Court, Tambaram and transfer the same to the file of the Family Court, Chennai.

2. The petitioner herein is the wife, who has filed the present Transfer Civil Miscellaneous Petition seeking for withdrawal of O.P.No.13 of 2019 filed by her, which is pending on the file of Sub Court, Tambaram and transfer the same to the file of the Family Court, Chennai.

3. It is stated in the affidavit filed in support of this petition that the petitioner got married to the respondent on 16.02.2017 at Selvam Mahal, Chrompet, Chennai, as per the Hindu rites and Custom. The same was arranged marriage and Shanthi Muhurtham was arranged on the day of the marriage itself at her parent's home. On that occasion, the respondent submitted that he would like to move with her like a friend for a few days and slept without even having a conversation with her. Even after starting their marital life in the respondent's house, the respondent used to sleep in his parent's room along with his parents after returning from the office and when she questioned him about the same, he will return to their room and subsequently starts sleeping without any conversation. After few

days, when she asked the respondent as to why he was not even making any normal conversation with her, he immediately behaved in a violent manner and asked her what he should talk about and also abused her in filthy language stating that she is only interested in sex and nothing else.

4. On 11.03.2017, the respondent on his way back home from office had gone to Dr.Kamaraj Hospital in Chrompet for conducting some test, which was informed to her in the night and he further informed that the Doctor asked him to collect the report the following day and he will go along with his parents to collect the same. The petitioner told the respondent that she would also come along with him to collect the report and he denied the same. After getting the report, the respondent or his parents neither showed the Medical Report nor disclosed its contents or details to her.

5. While so, during the first week of April, when she was arranging the dresses in the wardrobe in their room, she found the Medical Report of the respondent, which was hidden under a stack of clothes. She was shocked to read the Medical Report of the respondent, which stated that he had "Quick Ejaculation, Erectile Dysfunction, Phimosi and Small Testicle". After the respondent's return from his office, she asked him about the same and immediately the respondent started beating her. She therefore fell down and the respondent had dragged her to the hall and beat her again in front of his parents and abused her in filthy language calling her as 'prostitute' and a 'thief', who has found his Medical Report without his knowledge. His parents also joined him and they also started beating her and stated that if she ever divulged the medical condition of the respondent to anyone in her family, then she will be set fire by pouring petrol and claim it to be a suicide. The respondent and his father while abusing her in filthy language had stated that they have settled in Chrompet for a long number of years and they had close connection with influential politicians who would help them to close her death as suicide.

6. The respondent and his parents started harassing her with verbal abuse and the respondent slapped her whenever she tried to utter any word and they demanded Rs.15,00,000/- stating that they have spent that money for the wedding and she has to bound to give it back as dowry. In such circumstances, in order to safeguard herself, she attended a couple of interview for a job. The respondent and his parents did not agree for the same and they also abused her both physically and mentally stating that under the guise of searching for a job, she was leading a wayward life. On 01.12.2017 when she returned from one such

interview, the respondent who was standing outside their marital home, slapped her when the moment she parked her scooter, on the road in full public view and also used abusive and filthy language and dragged her inside the house. Thereafter, the respondent's mother called her mother over telephone and told to come and take her back once and for all.

7. On 02.12.2017, she left for the interview from the respondent's house and when she returned back to respondent's home, the respondents and his parents again picked up a fight with her by abusing in vulgar and filthy language. Therefore, she immediately telephoned her mother, who had along with her brother came to the respondent's house and took her back to their home, since she was mortally afraid for her life and limb. While so, on 16.07.2018, the respondent called her brother and asked him what we had decided and also threatened him that her entire family should come to their house and apologise to him and his parents. The respondent further threatened that he would go to the workplace of her sister and defame her by hurling abuses at her, due to which her sister will lose her employment. The respondent further threatened that he would pour petrol over her and set her on fire and further will not let her family live in peace. Fearing untoward action from the respondent, the petitioner lodged a complaint before the All Women Police Station at Tambaram on 16.07.2018. The respondent came to the said Police Station on 17.07.2018 along with his mother and other relatives and as the petitioner and her family were standing outside the Police Station, he used filthy abusive language at her and also threatened to kill her. The respondent informed the Police that he is not willing for any settlement and that he would settle the issue in Court.

8. The petitioner filed O.P.No.13 of 2019 seeking for divorce and summons was sent to the respondent and the respondent entered appearance through his advocate on 27.06.2019 and the same was posted on 31.10.2019 for filing counter. The respondent was angry that the petitioner had disclosed his medical condition on the ground of non consummation. Hence, she was under a mortal fear that the respondent would take any extreme step which would put her life at risk, since she have to attend the hearings in the above O.P. all alone and her brother due to his employment cannot accost her.

9. She further submitted that the post of learned Sub Judge at Tambaram has fallen vacant and the case would also not progress in the absence of the presiding officer. Since the respondent, his parents and all his relatives are residing in Chrompet, which is very close to Sub Court, Tambaram, the respondent would harm her physically when she visit the Sub Court, Tambaram for hearing. Therefore, if the above O.P. is

transferred to anyone of the Family Court at Chennai, there would be adequate security for her life and limb since there is a regulated system of issuing passes to the litigants and monitoring all the visitors in the High Court Campus through police personnel. Hence, she prayed for transferring the said O.P. from Sub Court, Tambaram to Family Court, Chennai.

10. The learned counsel appearing for the petitioner submitted that in the Family Court, Chennai, there are huge number of cases pending and requested to transfer the matter from Sub Court, Tambaram to IV Additional Family Court, Chennai instead of transferring the same to Family Court, Chennai and prayed for allowing the Transfer Petition.

11. The learned counsel appearing for the respondent submitted that both the parties are residing near Tambaram and that will be easier for them to appear for hearing. Since the petitioner is residing in between Tambaram and Chennai and the respondent is residing at Chrompet, there will not be any hardship for them to appear before the Sub Court, Tambaram and prayed for dismissal of the Transfer Petition.

12. Heard the learned counsel for the petitioner and respondent and perused the entire materials on record.

13. It is well settled law that whenever the transfer application is filed in matrimonial disputes, the convenience of the wife shall be given preference as held by the Hon'ble Supreme Court in the Judgments reported in 2008 (9) SCC 353 [Arti Rani @ Pinki Devi and another Vs. Dharmendra Kumar Gupta] and AIR 2002 SC 396 [Sumita Singh Vs. Kumar Sanjay and another]. Hence, this Court is inclined to transfer the O.P.No.13 of 2019 from the file of the Sub Court, Tambaram to the file of the IV Additional Family Court, Chennai as per convenience of the petitioner/wife.

14. The learned counsel for the petitioner submitted that the petitioner had filed a memo calculating the expenses towards the petitioner's marriage totaling Rs.17,52,591/- and pleaded this Court to consider the same. This Court is not inclined to go into merits of the petition filed in Court below and it is up to the parties to raise the same before the IV Additional Family Court, Chennai.

15. Accordingly, this Transfer Civil Miscellaneous Petition is allowed and the O.P.No.13 of 2019 pending on the file of the Sub Court, Tambaram is withdrawn and transferred to the file of the IV Additional Family Court, Chennai. No costs.

16. The Registry of the Sub Court, Tambaram, is directed to transmit the entire case papers/bundles relating to the O.P.No.13 of 2019 to the IV Additional Family Court, Chennai, within a period of two weeks from the date of receipt of a copy of this order.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

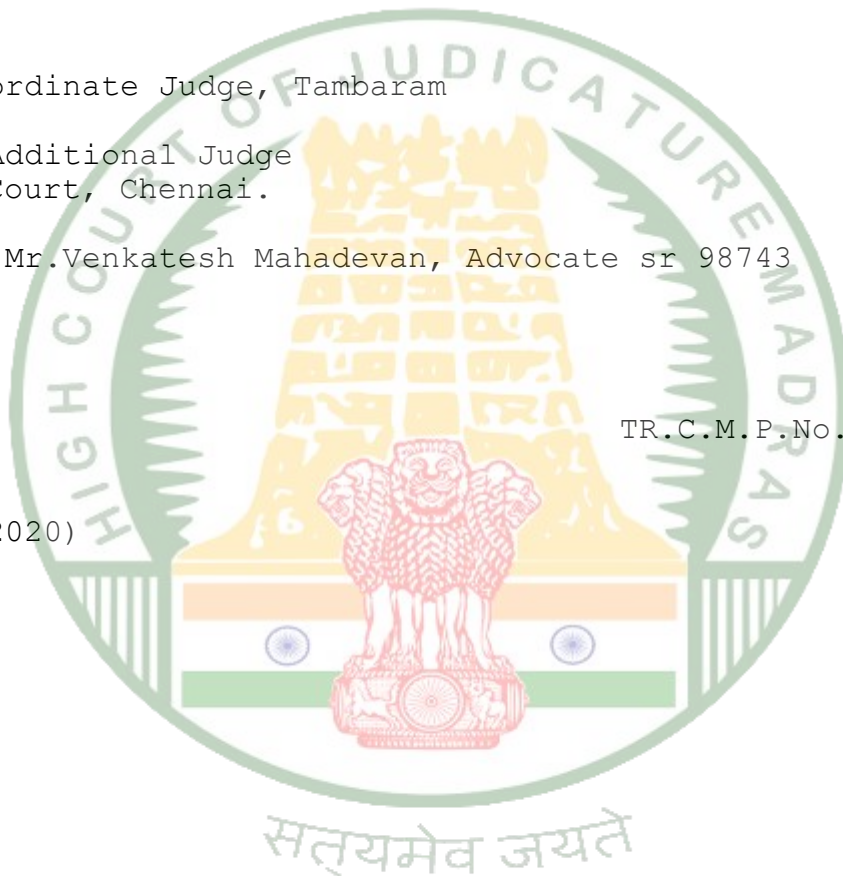
1.The Subordinate Judge, Tambaram

2.The IV Additional Judge
Family Court, Chennai.

+2 CCS to Mr.Venkatesh Mahadevan, Advocate sr 98743

TR.C.M.P.No.805 of 2019

SV(CO)
SP(21/02/2020)



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