

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

C O R A M

THE HONOURABLE MRS.JUSTICE BHAVANI SUBBAROYAN

TR C.M.P. No.855 of 2019

and

C.M.P.No.23517 of 2019

Kanchana

... Petitioner

Vs.

Ibrahim Sha

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw HMOP. No.43 of 2019 on the file of the Sub Court, Mettur and transfer the same to the file of the Family Court, Chennai.

For Petitioner : Mr.B.Janakiram

For Respondent : Mr.A.Saravanan

O R D E R

This petition has been filed by the petitioner to withdraw HMOP. No.43 of 2019 on the file of the Sub Court, Mettur and transfer the same to the file of the Family Court, Chennai.

2. The case of the petitioner is that the respondent and the petitioner are the husband and wife. Both were working in Sun TV. As such, the respondent had introduced himself as Sai Kaviyan to the petitioner and also he stated that he is an orphan and that he proposed to marry her. Thereafter, the petitioner and her family members have arranged marriage with the respondent. Accordingly, the marriage between the petitioner and the respondent was solemnized on 27.10.2006 at Arupadaiveedu Murugan Temple, Besant Nagar, Chennai and on the same day, reception was arranged at Hotel Kanchi, Egmore, Chennai. In the lawful wedlock, a male child viz., Deepesh was born on 16.07.2007. After a year, the respondent's mother viz., Alimammal came to the petitioner's house at Chennai. The petitioner came to know that the respondent is a muslim and he has a family at Alangudi, Pudukottai District. When the petitioner asked the same to the respondent, he did not reveal anything.

3. The respondent had started a business in the name and style of SDS Motors at Madhavaram, Chennai, for which, the petitioner has arranged a sum of Rs.16 Lakhs and handed over

the same to him. However, the respondent did not succeed in the business and incurred heavy loss within four months. In order to settle the said loss, the respondent has started to torture the petitioner to pledge her jewels. At request of the respondent's mother and brother in law, the petitioner has handed over the jewels to the respondent and thereafter, the respondent along with his mother and brother in law taken all jewels and went to Alangudi and the respondent did not turn up to Chennai and he never repaid any loan. When the petitioner called him over phone, the respondent did not pick up and the his mother and brother in law have demanded a sum of Rs.50 Lakhs as dowry to re-unite with her husband. The petitioner's parents had sent a sum of Rs.25 Lakhs as dowry to the respondent. But the respondent has never come to Chennai.

4. It has been submitted by the petitioner that on 22.08.2012, the petitioner went to Alangudi to enquire about the respondent, the respondent's parents and brother in law abused her in filthy language and threatened her with dire consequences. With regard to the same, the petitioner has preferred a complaint before the Deputy Superintendent of Police, Alangudi and CSR. No. 349/SDO/CAMP/ALG/12. The same was forwarded to the All Women Police Station, Alangudi in Crime No.249 of 2012 for the offences under Section 498(A), 294(b) and 506(ii) IPC read with section 4 of the Dowry Prohibition Act. For which, the respondent and his parents and brother in law have filed an anticipatory bail petitions in Crl. OP.Nos.14894 and 14938 of 2012 before the Madurai Bench of Madras High Court and the same was dismissed. Subsequently, FIR was transferred to the Inspector of Police, W-9, All Women Police Station, Villivakkam, Chennai in Crime No.6 of 2013.

5. Again the respondent and his family members have preferred an anticipatory bail petitions in Crl.OP.Nos.25484 and 25216 of 2012 before the Hon'ble High Court, Madras. At request of the respondent, the matter was referred before the Mediation Centre and the same was failed. Thereafter, the respondent has filed a petition before the Sub Court, Mettur in HMOP. No.43 of 2019 for dissolution of marriage. The petitioner is resident of Chennai and she finds it difficult to travel from Chennai to Mettur to attend the Court proceedings. Hence, she seeks to transfer of the case filed by the husband to the file of the Family Court, Chennai.

6. The learned counsel for the petitioner would submit that the petitioner is a staying along with her son in Chennai and the son is studying at 7th standard. The petitioner is employed. If the case is transferred to Chennai, on the days of Court hearing, she would apply for one day leave. Otherwise, she would forced to take leave for a couple of days. This would be an additional burden for the petitioner and it is not possible for her to leave her son alone and travel to Mettur for attending Court proceedings. If the case

is transferred to Chennai, no prejudice would be caused to the respondent. The learned counsel for the Petitioner would further submit that being a lady, it is difficult for the petitioner to travel to Mettur which comes around 364 Kms. Hence, she prays to transfer of the case filed by the husband to the file of the Family Court, Chennai.

7. The learned counsel for the respondent would submit that the respondent had vehemently denied all the allegations made by the petitioner and he has no objection to transfer the same to the file of the Family Court, Chennai.

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

9. I am satisfied with the reasons stated in the affidavit filed in support of this petition. The Hon'ble Supreme Court in the judgment reported in 2008(9) SCC 353 (Arti Rani @ Pinki Devi and another Vs.Dhamendra Kumar Gupta) has held that convenience of woman is to be taken into consideration first at the time of considering the above transfer application.

10. In view of the above, I am inclined to allow this Transfer Civil Miscellaneous Petition. Accordingly, this petition is allowed with the following directions:

The learned Sub Judge, Mettur is directed to transmit the entire records in HMOP. No.43 of 2019 on the file of the Sub Court, Mettur to the file of the Family Court, Chennai and the learned Judge, Family Court, Chennai is directed to dispose of the same on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Mettur.

2.The Family Court, Chennai.

+3 cc to Mr.B.Janakiram, Advocate SR.No.99499

TR C.M.P. No.855 of 2019
and
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VD(CO)
GMV(21/01/2020)