



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tr.C.M.P.No.838 of 2019 and
C.M.P.No.23099 of 2019

Bavatharani ... Petitioner

Vs.

Jagajananda ... Respondent

Prayer:

Transfer Civil Miscellaneous Petition is filed under Section 24 Rule (1) (2) of Civil Procedure, to withdraw and transfer the H.M.O.P.No.4184 of 2019, pending on the file of Family Court-1, Chennai to Sub Court in Kallakurichi.

For Petitioner : Mr.V.Gunasekar

For Respondent : Mr.P.Saravanan

O R D E R

The petitioner herein, who is the wife of the respondent, has filed the present petition seeking for withdrawal of H.M.O.P.No.4184 of 2019, pending on the file of Family Court-1, Chennai and transfer the same to the Sub Court in Kallakurichi.

2. The case of the petitioner is that the respondent has filed a H.M.O.P.4184 of 2019 before the Family Court, Chennai alleging that the marriage between herself and the respondent was solemnized on 30.01.2019 at Sri Arulmigu Angala Easwari, Sri Muneeswarar Aalayam at Burma Nagar, Nandambakkam, Chennai, which is totally a false one. The petitioner is native of the said village and the respondent is the resident of Cuddalore District. As the respondent is the relative of petitioner's mother, he came to the petitioner's house on November 2018 for her brother's marriage and at that time only, the petitioner had seen the respondent and she had not seen him anywhere outside her house. The petitioner has completed her B.E.(Computer Science) and had decided to study for UPSC Exam through coaching



centre. The petitioner's father had accepted her request and joined her in Vetri IAS Academy in Anna Nagar, Chennai and that she had resided in the same academy hostel. During her course, the respondent had approached and requested the petitioner to marry him stating that he was in love with her. But the said request was not accepted by the petitioner and refused his request. After some time, the respondent's family threatened the petitioner stating that he will not permit her to live peacefully.

3. According to the petitioner, on 20-05-2019 the respondent had come to her house, quarrelled and attempted to attack the petitioner and her family for non-acceptance of marriage proposal and thereafter, her father gave a complaint against the respondent before the Chinnasalem Police Station and F.I.R was registered in Crime No.420 of 2019 for offences under Sections 294 (b), 352, 427, 448, 506 (ii) of I.P.C r/w Section 4 of W.H Act. The respondent was arrested and remanded judicial custody. Again, the respondent has taken the photo of the petitioner, morphed it and attached with the respondent's photo. Thereafter, the respondent had shared the said photo through Facebook, Whatsapp and other social medias. The said attitude of the respondent would definitely damage the future of the petitioner, therefore, she had given a complaint on 18-09-2019 against the respondent before the All Women Police Station in Anna Nagar and the police authorities issued a C.S.R No.188 of 2019 and enquiry is pending. In order to vandalize and to traumatize the petitioner, the respondent filed an petition under Section 9 of the Hindu Marriage Act 1955 in H.M.O.P No. 4184 of 2019 before the Family Court - 1, Chennai praying for Restitution of Conjugal Rights on false and untrue grounds. Due to the said attitude of the respondent, the father of the petitioner had forced her to discontinue her studies and informed to reside the petitioner at home town.

4. It is the further case of the petitioner that the distance between the Court and the petitioner's residence is more than 250 Kilometres and up and down about 500 Kms, and she do not have any one to accompany her, during the date of hearing from Kadathur to Chennai, which is nearly a six hours of travel. Moreover, there is no relative available to the petitioner at Chennai even for short stay.

5. The learned counsel for the petitioner relied on the Judgment rendered by the Hon'ble Supreme Court reported in AIR 2002 SC 396 [Sumitha Sanjay V. Kumar Sanjay] , wherein it is held that 'the convenience of the wife must be looked into and



accordingly the suit should be transferred to the Court at the wife place''. In the instant case, it would be inconvenient for the petitioner to travel 500 Kms for every hearing at the cost of threat to her life.

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6. Per contra, a detailed counter affidavit is filed by the respondent reiterating the averments stated in the said H.M.O.P. seeking for restitution of conjugal rights. The petitioner and the respondent were in love with each other and they were jointly roving around the city of Chennai in Malls and in various Theatres. Further, they also went to Second show at Sathyam Movies on 31.12.2018 to celebrate the new year and later on, they went to Santhome Church and Vadapalani Murugan Temple for new year celebration on 01.01.2019 at 3.00 a.m. On 01.01.2019 at about 8.00 hrs, the petitioner visited Sri Ramachandra Hospital, since there was little problem in the uterus of the petitioner. On 03.01.2019, the respondent and the petitioner visited Aravindh Eye Hospital on 07.01.2019, eventhough the parents of the petitioner were present at that time, none came forward to sign in the concern form for operation and the respondent only signed in the concern form, as husband, for surgery of the petitioner. After surgery, and as per request of the petitioner, the respondent stayed in the petitioner's brother's house from 07.01.2019 to 12.01.2019 and had taken care of her.

7. The counter of the respondent proceeds to state that the petitioner's family had decided to visit their native for pongal festival and the petitioner had invited the respondent to stay with her and the respondent had also stayed at Kadathur village from 13.01.2019 to 15.01.2019. Thereafter, the petitioner had requested the respondent to come to Koyambedu Bus stand and both of them had stayed in the respondent's house. At the instigation of the petitioner, the respondent married her on 30.01.2019 at Sri Arulmigu Angala Eswari Sri Muneeswarar Alayam at Burma Nagar, Nandambakkam, Chennai - 32.

8. Further, the allegations stated by the petitioner that there was no marriage taken place are denied and due to the said false allegations, the respondent was arrested and remanded to Judicial custody. Again, the petitioner has given a complaint before Police Station at Annanagar. Also, to prove the performance of marriage and to prove our matrimonial life at Chennai, it is necessary to conduct the case at Chennai, therefore, he seeks to dismiss the petition.

9. The learned counsel for the respondent in support of his submissions has relied on the Judgment of Hon'ble Supreme Court



reported in (2004) 13 Supreme Court Cases 405 [Kanagalakshmi V. A.Venkatesan] wherein it is held that ''in transfer proceedings, in matrimonial dispute, the wife seeking transfer of pending dispute from Bandra, Mumbai to Tirunelveli, Tamilnadu on ground of difficulty in travelling from Tirunelveli to Mumbai to pursue the case, the husband prepared to bear the expenses not only of the petitioner but also of the person accompanying her, both for travel and stay at Mumbai. Hence while disallowing the transfer petition, directions issued to husband to pay to the petitioner the said expenses.''

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

11. It is seen from the records that the respondent / husband is presently staying at Chennai and in the H.M.O.P. Petition, the respondent has stated his permanent address as Cuddalore. Since the respondent is temporarily residing at Chennai, he seeks to dismiss the petition. The petitioner / wife's averments has to be taken into account while deciding the said petition. The petitioner has given her address only as No.234, East Street, Kadathur P.O., Chinnasalem, Villupuram and in all the petitions, the respondent / husband has also given the address of the petitioner / wife as No.234, East Street, Kadathur P.O., Chinnasalem, Villupuram. That being the case, the averment of the respondent/husband cannot be taken into account. That apart, 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], this Court is inclined to allow this petition seeking for transfer.

12. Accordingly, the H.M.O.P.No.4184 of 2019, pending on the file of Family Court-1, Chennai is withdrawn and transferred to Sub Court, Kallakurichi. The Registry of the Family Court-1, Chennai is directed to transmit the entire case papers to the Sub Court, Kallakurichi within a period of four weeks from the date of receipt of copy of this order.



With the above observation and directions, the present Transfer Civil Miscellaneous Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

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Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

ssd

To

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

+1 cc to Mr.Gunasekar Advocate sr99528

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