

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl. O.P. No.5505 of 2020
and
Crl. M.P. No.3124 of 2020

Anantha Vimalraj,
S/o.Selvaraj,
No.215, 1st Floor, Samiyappa Nagar,
2nd Street, Permabalur,
Permabalur Taluk and District.

Presently residing at
No.B-Type, Tamilnadu Housing Quarters,
Plot No.3016, Avadi TK and Thiruvallur Dt.,
Chennai - 600 054.

... Petitioner

.vs.

1. Joyfreeda Punitha Angel @ Priya
W/o. Anantha Vimalaraj.
2. Minor Kevin
S/o. Ananatha Vimalaraj,
rep. by next friend and guardian mother
natural the above 1st petitioner.

Both respondents are residing at
No.215, first floor,
Samiyappa Nagar, 2nd Street, Perambalur,
Perambalur Taluk & District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 407 of Criminal Procedure Code praying to transfer the Crl.M.P. No.1775 of 2019 in M.C. No.13 of 2013 on the file of the learned Chief Judicial Magistrate at Perambalur to the learned Judicial Magistrate I at Thanjavur.

For Petitioner : Mr. E.Veda Bagath Singh

For Respondents : No Appearance

ORDER

This petition has been filed seeking transfer of the CrI.M.P. No.1775 of 2019 in M.C. No.13 of 2013 on the file of the learned Chief Judicial Magistrate at Perambalur to the learned Judicial Magistrate-I at Thanjavur.

2. Learned counsel for the petitioner submitted that the petitioner and first respondent are the husband and wife and due to wedlock, wife gave birth to the second respondent. He further submitted that the first respondent filed a maintenance petition as against the petitioner in M.C. No.13 of 2013 on the file of the Judicial Magistrate-I, Tanjore and the petitioner could not able to attend the proceedings and he was set ex-parte and thereby, the learned magistrate awarded maintenance in favour of the first respondent herein and directed the petitioner to pay a sum of Rs.5,000/- per month each to the respondents herein and also a sum of Rs.50,000/- per year for other amenities. He further submitted that, thereafter, the respondents filed Execution Petition under Section 128 Cr.P.C. in CrI. M.P. No.1775 of 2019, to execute the order of maintenance before the Chief Judicial Magistrate, Perambalur and only on receipt of the notice from the Chief Judicial Magistrate, Perambalur, the petitioner came to know that the respondents filed maintenance case and obtained ex-parte award as against the petitioner. Learned Counsel for the petitioner submitted that, the petitioner immediately filed a petition to set aside the ex-parte award passed in M.C. No.13 of 2013 before the Judicial Magistrate I, Tanjore. Therefore, the petitioner seeks transfer of the execution petition from the file of the Chief Judicial Magistrate, Perambalur to the file of the Judicial Magistrate I, Tanjore.

3. Perusal of the records shows that the petitioner and the first respondent are husband and wife and they got separated due to misunderstanding. Due to their wedlock, the first respondent gave birth to the second respondent herein. Thereafter, the first respondent filed maintenance petition before the Judicial Magistrate, Tanjore in M.C. No.13/13. At the time of filing, both the petitioner and the respondent were residing within the jurisdiction of Tanjore District. After the receipt of the notice, the petitioner did not appear before the Trial Court in M.C. No.13/13. Therefore, he was set ex-parte and award has been passed by the learned Magistrate on 27.08.2013, thereby, directing the petitioner to pay maintenance of Rs.5,000/- per month to each of the respondent and also a sum of Rs.50,000/- per year for other amenities. Thereafter, the respondents shifted their residents within the jurisdiction of Perambalur. Since the petitioner did not comply with the said order, the respondents were constrained to file an Execution Petition under

Section 128 Cr.P.C. before the Chief Judicial Magistrate, Perambalur. On the said petition, the petitioner was served notice and thereafter, he filed a petition to set aside the ex-parte order passed in M.C. No.13 of 2013 by the Judicial Magistrate I, Tanjore and it is still pending.

4. It is also seen from the records the petitioner is having his native address within the jurisdiction of Perambalur and the respondents are also residing within the jurisdiction of Perambalur. Therefore, instead of transferring the Execution Petition from the file of Judicial Magistrate, Perambalur to Tanjavur, this Court is inclined to transfer the set aside petition filed by the petitioner.

5. Accordingly, the set aside petition filed by the petitioner under Section 126(2) Cr.P.C. before the Judicial Magistrate I, Tanjore is hereby withdrawn and transferred to the file of Chief Judicial Magistrate, Perambalur. On receipt of bundle, learned Chief Judicial Magistrate, Perambalur is directed to dispose of the set aside petition filed by the petitioner herein, within a period of three months from the date of receipt of entire bundle.

6. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate I, Tanjore.
2. The Chief Judicial Magistrate, Perambalur
3. The Public Prosecutor,
Madras High Court, Madras.

+1cc to Mr.E.Veda Bagath Singh, Advocate, Sr.No.24865

Cr1. O.P. No. 5505 of 2020

vsn ii (co)
rr ii (15/09/2020)