

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.20114 of 2019
and
Crl.M.P.No.10321 of 2019

R.Balaji

... Petitioner

Vs

Mrs.Priyanka @ Malarkodi

... Respondent

PRAYER: Criminal Original Petition filed under Section 407 of Criminal Procedure Code praying to withdraw the petition filed in M.C.No.16 of 2019 from the Court of Judicial Magistrate - I at Kallakkurichi, Villupuram District and transfer the same to Family Court at Chennai for proper and early adjudication.

For Petitioner : M/s.Majestic Law Firm.
For Respondent : No appearance.

O R D E R
(through Video Conference)

This Criminal Original Petition has been filed, seeking the relief, to withdraw the petition filed in M.C.No.16 of 2019 from the file of Judicial Magistrate - I at Kallakkurichi, Villupuram District and transfer the same to Family Court, Chennai.

2.Heard M/s.Majestic Law Firm, learned Counsel appearing for the petitioner. In spite of notices sent and even after showing name in the cause list, the respondent has not turned up.

3.The Petitioner herein is the respondent in M.C.No.16 of 2019 before the Judicial Magistrate No.I, Kallakurichi. The said application has been filed by the respondent herein under Section 125 of Criminal Procedure Code in claiming maintenance, similarly the respondent has also filed an application in D.V.C.No.03 of 2019 under Sections 2, 12, 20, 21, 22 of the Protection of Women from Domestic Violence Act, 2005 and the same was pending in the same Court. In such circumstances, the petitioner herein filed an application before the III Additional

Family Court, Chennai against the respondent under Section 9 of Hindu Marriage Act praying for restitution of conjugal rights in O.P.No.760 of 2019. In the said application, since the respondent has not turned up even after the receipt of the notice, the learned Judge made the respondent as ex-parte and allowed the petition.

4. In the said circumstances, the learned Counsel appearing for the petitioner would contend that if the petition mentioned original petition which is pending before the Judicial Magistrate No.I, Kallakurichi is transferred to Chennai, there may be some opportunity for the petitioner for dissolution of the marriage by mutual consent. Accordingly, he prays to allow this application.

5. Now on considering the said submissions with relevant records, it is admitted on either side that as of now, no application is pending on the file of Family court in respect to the dispute having by the petitioner with respondent. In general, since the dispute having between the petitioner and the respondent is a family affair, convenience of the wife alone has to be taken into account for deciding these type of petitions. Transferring the proceedings from one Court to another Court will cause much prejudice to the wife more than the husband.

6. Therefore, I am of the considered opinion that petition filed by the petitioner is devoid of merits and accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst. Registrar (CS)

//True Copy//

Sub Asst. Registra

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To

1. THE JUDICIAL MAGISTRATE-I
KALLAKURICHI, VILLUPURAM DISTRICT.

2. THE JUDGE, FAMILY COURT CHENNAI.

CrI.O.P.No.20114 of 2019
and
CrI.M.P.No.10321 of 2019

KV(CO)
VC (18/12/2020)