

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.08.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.4904 of 2017

and Crl.M.P.No.3670 of 2017

K.Ponnuramgam
S/o.Kathavarayan

... Petitioner

Vs.

1.Veerammal
W/o.Ponnuramgam
2.Kapildevi
D/o.Ponnuramgam

... Respondents

Prayer : Criminal Original Petition filed under Section 407 of Criminal Procedure Code to withdraw M.C.No.2 of 2011 pending on the file of the Chief Judicial Magistrate Court, Villupuram and transfer the same to any other Competent Court.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.K.Chithirai Selvan

O R D E R

This petition has been filed seeking direction to transfer the case in M.C.No.2 of 2011 on the file of the Chief Judicial Magistrate Court, Villupuram, to any other Competent Court.

2.The gist of the case is as follows :

(i) The marriage between the petitioner and the first respondent took place in the year 1972 and out of their wedlock, the 2nd respondent was born on 25.1.1984. Further, the averments made in the maintenance petition is that the petitioner, who was working in TWAD Board a transferable job and had developed relationship with one Mallika. Thereafter, the petitioner neglected the respondents 1 and 2 from the year 1986 onwards and they were living separately. Hence, the 1st respondent had given a complaint to the employee of the petitioner, where the petitioner had agreed to pay monthly maintenance of Rs.500/- to the 1st respondent and also to take care of the educational expenses of the 2nd respondent. However, the petitioner had not paid the said amount and hence, the 1st respondent had filed a maintenance case in M.C.No.2 of 2011.

(ii) The 1st respondent was examined and in her deposition, certain corrections were made by striking out the name of one Bheeman and interpolating the name of the petitioner with the help of Murugan who is the Office Assistant of the said Court as well as the brother of the first respondent and Durai, Typist. Hence, the petitioner had filed a complaint before the learned Principal District Judge, Villupuram, which was forwarded to the learned Chief Judicial Magistrate, Villupuram, for conducting enquiry in the said case, however, the enquiry was still kept pending. Further, the stage and outcome of the enquiry was not known to the petitioner. Hence, the petitioner has filed R.T.I application and came to know that the enquiry was initiated by issuing notice to the delinquents on 22.1.2015.

(iii) Thereafter, the petitioner had filed transfer application in Tr.C.M.P.No.309 of 2015, before this Court under Section 24 of Criminal Procedure Code seeking direction to transfer the maintenance case from the file of the Chief Judicial Magistrate, Villupuram to any other Court. This Court by order dated 24.04.2015 granted an interim stay and also directed the District Judge, Villupuram to send a report on the complaint dated 11.10.2014. Thereafter, the Tr.C.M.P.No.309 of 2015 was withdrawn on 28.07.2017, reserving the right of the petitioner to file transfer petition under Section 407 of Cr.P.C, since the proceedings before the lower Court were initiated under Section 125 Cr.P.C. Thereafter, the present petition has been filed. The petitioner has also annexed the deposition copy of the first respondent. It is seen that some corrections have been made in the third and fifth line of the deposition copy.

3. The learned counsel for the petitioner submitted that the respondent has having illegal relationship with Bhiman and they were living together as husband and wife. In the cross examination it is clearly stated that she had not obtained divorce from Bhiman and she is not aware where he was presently residing. The petitioner has been falsely implicated in this case. He further submitted that the said corrections were made with the help of Murugan and Durai. He further submitted that now the Presiding Officer of Chief Judicial Magistrate Court, Villupuram has been transferred. Hence, the petitioner has no objection to continue with the proceedings before the Court. However, the petitioner seeks liberty to recall the first respondent for the purpose of further cross examination and to clarify about the corrections made in the deposition and admission of living with the said Bhiman as husband and wife. He further submitted that pursuant to the order of this Court dated 24.4.2015, the report called for, is yet to be made available.

4.The learned counsel for the respondents submitted that the evidence of the petitioner was recorded as per the Criminal Procedure code by the learned Chief Judicial Magistrate, Villupuram in the presence of the petitioner and his counsel. Thereafter, the deposition has been typed as stated by the 1st respondent and no such corrections have been made. This petition has been filed with an ulterior motive to avoid to pay the maintenance amount to the respondents. Due to the pendency of the above case, the proceedings in M.C.No.2 of 2011 are still kept pending and hence, he sought for dismissal of this petition. He further submitted that the complaint of the petitioner was without substance and the enquiry concluded.

5.Considering the rival submissions and on perusal of the materials available on record, it is apparently seen that some corrections are found in the deposition of the 1st respondent. Further, those corrections are vital, which would prejudice the petitioner and no proper explanation is forthcoming. The enquiry report sought by this Court is not produced so far. Now the Presiding Officer has also got transferred.

6.In view of the above, this Criminal Original Petition is dismissed. Granting liberty to the petitioner to recall the respondent for further cross examination to clarify the corrections and to remove the apprehension of prejudice. This Court directs the learned Principal District and Sessions Judge, Villupuram to ascertain the stage of the enquiry and forward a copy of the report to this Court on or before 10.09.2020. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Principal District and Sessions Judge,
Villupuram.

2.The Chief Judicial Magistrate,
Villupuram.

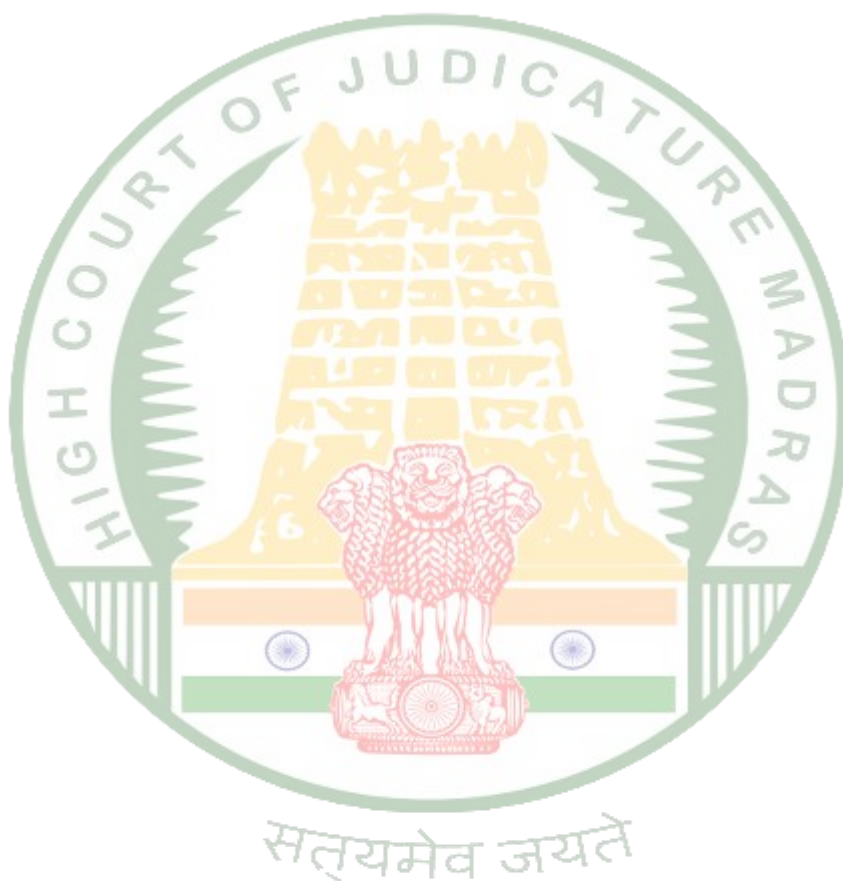
Copy to

1. The Registrar Judicial
High Court, Madras-104.

2. The Section Officer,
Criminal Section,
High Court, Madras-104.

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