

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Crl OP.No.25634 of 2019
and
Crl. M.P. No.13703 of 2019

C. Selvam

...Petitioner

Vs.

1. Mrs. Deivakanni
2. Sensudar (alias) Nakshal Bhari
3. Bakatsingh

...Respondents

Prayer: Criminal Original Petition filed under Section 407 of Cr.PC praying to withdraw the M.C.No. 2 of 2019 on the file of the Judicial Magistrate No.II, Thiruvallur and transfer the same to the Sub Court Gingee to try along with HMOP No. 53 of 2019 pending on the file of the Subordinate Judge, Gingee, Villupuram District.

For Petitioner : Mr. K. Balakrishnan

For Respondents : Mr. N. Nagusah

ORDER

The Criminal Original Petition has been filed seeking to withdraw the M.C. No.2 of 2019 pending on the file of the Judicial Magistrate Court No.II, Tiruvallur and transfer the same to the Subordinate Court, Gingee to try along with the HMOP NO. 53 of 2019 pending on the file of the Subordinate Court, Gingee.

2. The petitioner is the husband of the first respondent. It is found that the respondents have levied the maintenance case against the petitioner in M.C.No.2 of 2019 and the same is pending on the file of the Judicial Magistrate Court No.II, Tiruvallur. Even as averred in the petition laid by the petitioner, it is found that the petitioner has entered appearance in the abovesaid maintenance case and filed his counter and contesting the maintenance case. Thereafter, it is

found that the petitioner has chosen to levy the divorce case against the first respondent and the divorce case filed by him has been taken on file in HMOP No. 53 of 2019 by the Subordinate Court, Gingee. It is seen that till date, even according to the petitioner as averred in the criminal original petition, the notice has not been served on the first respondent.

3. At this stage of the matter, the present Criminal Original Petition has been laid seeking the transfer of the maintenance proceedings to the Subordinate Court, Gingee for trying along with HMOP No. 53 of 2019.

4. It is thus found that only after the filing of the maintenance case by the respondents, the petitioner has chosen to levy the HMOP and when it is noted that the petitioner has already entered appearance in the maintenance case and contesting the case particularly as to the maintainability of the maintenance case, as rightly contended by the respondents' counsel, the petitioner has to agitate his case only before the concerned court where the maintenance case is pending.

5. That apart, the only reason given by the petitioner for seeking transfer is that he is unable to apply leave for appearing before the Magistrtrate Court in the maintenance proceedings levied by the respondents. When it is found that the petitioner is represented by an advocate, accordingly the petitioner would be required to be present in the Magistrate Court only as and when his presence is required by the concerned Magistrate. In such view of the matter, the reason adduced by the petitioner for seeking transfer that he is unable to apply leave and appear in the Magistrate Court Proceedings, as such, cannot be the basis for transferring the maintenance proceedings to the Gingee Subordinate Court.

6. Furthermore, when according to the respondents they are residing at Thirunindravur, Tiruvallur District, accordingly they are legally competent to lay the maintenance proceedings before the Magistrate court, Thiruvallur and in such view of the matter, if the maintenance case is transferred to the Subordinate Court, Gingee, as rightly contended by the respondents' counsel, the respondents would be seriously prejudiced and they would be put to immense hardship in appearing before the Subordinate Court, Gingee for each and every hearing. Particularly when the respondents are seeking maintenance itself for their livelihood from the petitioner, if they are directed to contest the proceedings at the Subordinate Court, Gingee, they will be put to great loss and hardship and on the other hand considering the status of the petitioner and when the petitioner has also entered appearance and contesting the maintenance proceedings before the Magistrate Court,

Thiruvallur, in such view of the matter, no valid ground is projected by the petitioner for transferring the maintenance proceedings to the file of the Subordinate Court, Gingee.

7. In the light of the abovesaid discussions, I do not find any merit in the request made by the petitioner seeking the transfer of the maintenance proceedings levied by the respondents to the file of the Subordinate Court, Gingee for trying along with HMOP No. 53 of 2019. Resultantly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Copy to

1. The Judicial Magistrate No.II,
Thiruvallur.
2. -Do- Thro The Chief Judicial Magistrate,
Thiruvallur.
2. The Subordinate Judge,
Gingee, Villupuram District.

+lcc to Mr.N.Nagusah, Advocate Sr.28559

CrI OP.No.25634 of 2019

ca[co]
srg 16/10/2020