

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HON'BLE MR.JUSTICE P. RAJAMANICKAM

CRL.O.P.No.26423 of 2019

and

CRL.M.P No.14124 of 2019

J. Anthony Mary @ Monica ... Petitioner/Accused

-Vs-

Sujatha ...Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to withdraw the STC.No.199 of 2019 pending for issue of service on the file of the II Judicial Magistrate, Ponneri and transfer the same to any other competent court in Chennai District, more particularly V Additional Family Court, at Chennai District.

For Petitioner : Mr.N.Easwaran

For Respondent : Mr.J. Agni Selvaraju

ORDER

This Criminal original Petition has been filed by the accused under Section 407 Cr.P.C., to transfer the case in STC.No.199 of 2019 from the file of the Judicial Magistrate II, Ponneri, to the file of V Additional Family Court, Chennai District.

2. The learned counsel for the petitioner has submitted that the petitioner's husband is a practicing advocate at High Court Madras. He further submitted that the petitioner's husband himself told the petitioner that he has illicit extra marital relationship with the respondent since 2013 and based on the said statement, the petitioner has filed IDOP.No.4801 of 2018 on the file of the V-Additional Family Court, Chennai, on the ground of adultery. He further submitted that after service of notice in IDOP, the respondent herein entered appearance and filed counter and thereafter, she filed a private complaint alleging that the petitioner has committed offence under Sections 500 and 501 IPC and based on the same, the learned Judicial Magistrate No.II Ponneri, has taken the case on file in STC.No.199 of 2019. He further submitted that since IDOP.No.4801

of 2019 is pending on the file of the V Additional Family Court, Chennai, the case in STC.No.199 of 2019 also may be transferred to the V Additional Family Court, Chennai.

3. Per contra, the learned counsel for the respondent has submitted that the Family Court cannot try the criminal case. He further submitted that the respondent/complainant and the witnesses are residing only within the jurisdiction of Judicial Magistrate No.II, Ponneri, and hence if the case is transferred to some other court, that would cause prejudice to the respondent and therefore, he prayed to dismiss the petition.

4. Admittedly, the case in STC.No.199 of 2019 is a Criminal Case and the same is pending before the Judicial Magistrate No.II Ponneri. The petitioner requests to transfer the said case to the V Additional Family Court. At this juncture, it would be relevant to refer to Section 10 of the Family Courts Act, 1984 which reads thus:

''10. Procedure generally.-

(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.''

5. From the aforesaid provision, it is clear that the Family Court shall be deemed to be a Civil Court other than the proceedings under Chapter-IX of the Code of Criminal Procedure

1973. The provisions of Code of Criminal Procedure will apply only in respect of the proceedings under Chapter IX of Criminal Procedure, i.e., only in respect of maintenance cases. Hence, the Criminal Case cannot be transferred to the Family Court.

6. For the aforesaid reasons, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(C.S.II)

/True Copy/

Sub Assistant Registrar

To

1. The II Judicial Magistrate,
Ponneri.

2. The V Judge,
V Additional Family Court,
Chennai.

+1 cc to M/s.N.Easwaran,Advocate Sr.No. 4607

+1 cc to M/s.J.Agniselvaraj,Advocate Sr.No. 4700

AKM/28.01.2020/3P-5C /

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