

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.26276 of 2019

and

Crl.M.P.Nos.14056 and 14053 of 2019

1.Santhosh Murugan,  
S/o.Palaniappan

2.Palaniappan,  
S/o.Sengoda Gounder

3.Shanthi,  
W/o.Palaniappan

...

Petitioners

versus

Nivetha,  
W/o.Santhosh Murugan

...

Respondent

Prayer: Criminal Original Petition filed under Section 407 of the Criminal Procedure Code, seeking to withdraw the D.V.O.P.No.3 of 2019 on the file of the learned Judicial Magistrate, Vendasandur and transfer the same to the file of any other Court of competent jurisdiction in Dharapuram.

For Petitioners : Mr.K.Kannadhasan  
for Mr.V.Balamurugan

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed for withdrawing D.V.O.P.No.3 of 2019 pending on the file of the learned Judicial Magistrate, Vendasandur and to transfer the same to the file of competent Court having jurisdiction to try the said Petition in Dharapuram.

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2. It is submitted by the learned counsel for the petitioners that on 13.10.2017, the first petitioner has filed F.C.O.P.No.372 of 2017 seeking for the relief to declare the marriage with the respondent as null and void. Pursuant to that, on 02.01.2018, the respondent herein has filed a petition in H.M.O.P.No.4 of 2018 seeking for the relief of restitution of conjugal rights. Thereafter, the first petitioner and respondent had filed Transfer Petitions in Tr.C.M.P.(MD)No.320 of 2018 and Tr.C.M.P.(MD)No.135 of 2018 respectively before the Madurai Bench of this Court and by an order dated 19.12.2018, both the petitions were transferred to the Sub Court, Dharapuram, on the ground that there should not be any conflicting judgments.

3. Learned counsel for the petitioners would further submit that after transferring both the above referred petitions to the Sub Court, Dharapuram, the respondent herein filed petition before the learned Judicial Magistrate, Vendasandur and the same was taken on file in D.V.O.P.No.3 of 2019 and as of now, the same is pending on the file of the learned Judicial Magistrate, Vendasandur.

4. In this regard, the learned counsel for the petitioners would submit that since the petition filed by the first petitioner and respondent are pending before the Sub Court, Dharapuram, it is necessary to transfer D.V.O.P.No.3 of 2019 also to the Court, which is having competent jurisdiction to try both the Petitions for the purpose of avoiding conflict of decisions.

5. Now, on considering the submission made by the learned counsel for the petitioners, he himself admitted as the petition filed for the relief of dissolution of marriage and petition filed for the relief of restitution of conjugal rights are pending before the Sub Court, Dharapuram. In the said circumstances, the petition filed by the respondent in D.V.O.P.No.3 of 2019 is pending before the learned Judicial Magistrate, Vendasandur. In respect of the jurisdiction point, the Sub Court, Dharapuram, is not having any jurisdiction to try the petition, which was filed under the provisions of domestic violence and more than that the counsel himself admitted that the respondent is residing within the jurisdiction of Vendasandur Magistrate Court. In general, for deciding these type of petitions, it is necessary to consider the convenience of wife. In this case also, for the reason that the respondent is residing in Vendasandur Magistrate Court limits, it is not necessary to transfer the petition mentioned D.V.O.P. to the Court of Sub Court, Dharapuram, since it is already observed,

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the Sub Court is not having any jurisdiction to try the said petition.

6. With the above observations, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

05.10.2020

sri

For Being Mentioned:

This Petition having been posted on Thursday, the 8<sup>th</sup> day of October 2020 under the caption for being mentioned pursuant to the orders of this Court dated 05/10/20 and made herein in the presence of Mr.K.Kannadhasan for Mr.V.Balamurugane Advocate for the petitioner and of Mr.Lakshmishankar Advocate for the respondent, this Court made the following order:

Crl.O.P. No.26276 of 2019  
and  
Crl. M.P. Nos.14056 and 14053 of 2019

R.PONGIAPPAN, J.

(This case has been heard through video conference)

Today, the matter is listed under the caption "for being mentioned" at the instance of the learned counsel for the petitioners.

2. On perusal of the records, it is seen that F.C.O.P. No.372 of 2017 has been filed by the first petitioner/husband seeking the relief of dissolution of marriage and H.M.O.P. No.4 of 2018 has been filed by the respondent/wife seeking the relief of restitution of conjugal rights before different Forums. However, by order dated 19.12.2018, this Court transferred both the cases to the Sub Court, Dharapuram, on the ground that there should not be any conflicting judgments. Further, it is seen that the respondent has also filed a domestic violence application in D.V.O.P. No.3 of 2019 before the learned Judicial Magistrate, Vendasandur.

3. Today, when the petition came up for hearing, it is represented by the learned counsel on both sides that the dispute between the petitioner and the respondent is settled now and both the parties are prepared to record the compromise before the Sub Court, Dharapuram, where their cases are pending.

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However, a petition in DVOP No.3 of 2019 is pending on the file of the Judicial Magistrate, Vendasandur and, therefore, it is submitted that to give a quietus to the whole issue, the above DVOP No.3 of 2019 on the file of the learned Judicial Magistrate, Vendasandur, should also be transferred to Dharapuram so that all the petitions can be settled together. The present petition was filed seeking transfer of DVOP No.3 of 2019, which was dismissed by this Court on the question of jurisdiction. However, the factum of compromise was not been placed before the Court, when orders were passed on 5.10.2020 dismissing the petition on the question of jurisdiction. Therefore, it is prayed that this Court, in exercise of its inherent jurisdiction, may recall the earlier order and also transfer DVOP No.3 of 2019 from the file of learned Judicial Magistrate, Vendasandur to the file of the learned Judicial Magistrate - I, Dharapuram, so that the disputes could be amicably settled by way of compromise between the parties.

4. Earlier, at the time of disposal of the instant petition, this Court had dismissed the petition on the question of jurisdiction. However, it is brought to the notice of this Court by the learned counsel on either side that the present petition was filed only for the purpose of transfer of the petition in DVOP No.3 of 2019 for the purpose of closing the dispute between the parties and not for trying the case on merits. The fact that the transfer was sought for only for the limited purpose of recording the compromise and closing all the disputes were not placed before the Court when the order was passed on 5.10.2020.

5. This Court, in the absence of the above crucial fact, had dismissed the petition vide its order dated 5.10.2020 on the question of jurisdiction, as the above fact of settling the dispute on the basis of the compromise being arrived at between the parties has not been brought to the knowledge of this Court. However, the fact being presented before this Court is that the transfer of the petition from the file of learned Judicial Magistrate, Vendasandur to the learned Judicial Magistrate - I, Dharapuram, is only for the purpose of recording the compromise memo and thereby settling the dispute between the parties, this Court is of the opinion that in the interest of justice and to give a quietus to the dispute between the parties, the petition in DVOP No.3 of 2019 on the file of the learned Judicial Magistrate, Vendasandur, should stand transferred to the file of the learned Judicial Magistrate - I, Dharapuram for the purpose of disposing of the case by recording the compromise arrived at between the parties.

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7. Accordingly, D.V.O.P. No.3 of 2019 pending on the file of the learned Judicial Magistrate, Vendasandur, shall be transferred to the file of learned Judicial Magistrate - I, Dharapuram. The learned Judicial Magistrate, Vendasandur, is directed to take necessary steps for transferring the case bundles to the learned Judicial Magistrate - I, Dharapuram, within a period of two weeks from the date of receipt of a copy of this order. On receipt of the case records, the learned Judicial Magistrate - I, Dharapuram is directed to dispose of D.V.O.P. No.3 of 2019 by recording the compromise entered into between the parties, within a period of two weeks thereafter.

8. In the result, the order of this Court dated 05.10.2020 is hereby recalled and the Criminal Original Petition stands allowed in the above terms.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vsi2

To

1.The Judicial Magistrate,  
Vendasandur.

2.The Sub Court,  
Dharapuram.

+1cc to M/s.V.Raghavachari, Advocate SR.32552

CrI.O.P. No.26276 of 2019  
and

CrI.M.P.Nos.14056 and 14053 of 2019

GP(CO)  
CB(23/11/2020)

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