

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CrI.OP.No.27367 of 2019
and CrI.MP.Nos.14547 & 14549 of 2019

V.R.Thirumal

.. Petitioner

-VS-

V.Smaitha

.. Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to withdraw the MC.No.16 of 2019, pending on the file of the Family Court, Chengalpattu, and transfer the same to the Family Court, Chennai.

For Petitioners : Mr.Saitanya Kesan

For Respondent : Mr.A.Shahul Hameed

ORDER

This petition has been filed to transfer the case in MC.No.16 of 2019 from the file of the Family Court, Chengalpattu to Family Court, Chennai.

2.The learned counsel for the petitioner has submitted that the respondent herein has filed MC.No.16 of 2019 under Section 125 of Cr.P.C seeking maintenance from the petitioner. He further submitted that already the petitioner has filed HMOP.No.95 of 2012 on the file of the Sub Court, Chengalpattu seeking divorce and subsequently, the said case was transferred to Family Court, Chengalpattu and re-numbered in FCOP.No.228 of 2015. He further submitted that the respondent herein has filed a petition seeking restitution of conjugal rights in FCOP.No.28 of 2016 on the file of the same Family Court. He further submitted that during pendency of the aforesaid petitions, the respondent has filed petition under Domestic Violence Act in DVC.No.3 of 2016 before the Additional Mahila Court, Chengalpattu against the petitioner herein and his family members. He further submitted that since the respondent has staged Dharna before the company where the petitioner was working, the petitioner was forced to resign his job on 13.06.2013. He further submitted that now

the respondent has become an Advocate and practicing before the Court at Chengalpattu including Family Court. He further submitted that the divorce petition which was filed by the petitioner was allowed and the petition which was filed by the respondent for restitution of conjugal rights was dismissed by the Family Court, Chengalpattu by a common judgment dated 01.08.2017. As against the same, the respondent has filed CMA.Nos.1602 and 1603 of 2018 and the same are pending before this Court.

3. The learned counsel for the petitioner has further submitted that the petitioner has filed CrI.OP.No.15627 of 2019 before this Court to quash the proceedings against DVC.No.3 of 2016 and in the said petition, this court considering the difficulty experienced by the petitioner during the Court proceedings, was pleased to dispense with his personal appearance before the Trial Court by the order dated 11.03.2019. He further submitted that thereafter only to harass the petitioner, the respondent has filed maintenance case in FCMC.No.16 of 2019 on the file of the Family Court, Chengalpattu seeking maintenance of Rs.1,00,000/- per month. He further submitted that when the petitioner was appearing before the Family Court in HMOP proceedings, the respondent has tried to manhandle the petitioner and the same was condemned by the Family Court Judge, Chengalpattu. He further submitted that since the respondent is a practicing Advocate before the Family Court, Chengalpattu, if MC.No.16 of 2019 is allowed to conduct enquiry before the same Court, the petitioner may not get justice. He further submitted that the petitioner apprehends that when he appears before the said court the respondent may assault him and therefore he prayed to transfer the MC.No.16 of 2019 to the Family Court, Chennai.

4. Per contra, the learned counsel appearing for the respondent has submitted that as against the order passed in HMOP by the family Court, Chengalpattu, the respondent herein has filed CMA.Nos.1602 & 1603 of 2018 before this Court and they are still pending. He denied the allegation that the respondent tried to manhandle the petitioner when the HMOP proceedings were pending before the Family Court, Chengalpattu and the same was condemned by the learned Family Court Judge. He further submitted that already when the petitioners HMOP was pending before the Sub-Court, Chengalpattu, he filed transfer CMP.No.404 of 2013 before this court to transfer the said HMOP to the Family Court, Chennai. But this Court after considering the rival submissions, dismissed the said petition by the order dated 28.10.2013. He further submitted that already one case in DVC. No. 3 of 2016 is pending on the file of the Additional Mahila Court, Chengalpattu and when the petitioner is prepared to appear in that case there would not be any difficulty for him to appear in MC.No.16 of 2019 also. He further submitted that since the respondent is a lady and if MC.No.16 of 2019 is transferred from the Court of Family

Court, Chengalpattu to Family Court, Chennai that would cause prejudice to her and it would be very difficult for her to travel to Chennai and therefore he prayed to dismiss the petition.

5. Admittedly, the respondent has filed DVC.No.3 of 2016 seeking certain reliefs under Domestic Violence Act and the same is pending before the Additional Mahila Court, Chengalpattu.

6. It is also to be pointed out that the petitioner as well as the respondent are residing within Chengalpattu Taluk and in such a case transferring the case from Family Court of Chengalpattu to Family Court of Chennai would cause inconvenience to both the parties. That apart admittedly the respondent is practicing as an Advocate at Chengalpattu. Further she is a lady. If the aforesaid case is transferred to Chennai, she has to come to Chennai by spoiling her regular work.

7. Further, though the learned counsel for the petitioner has submitted that when HMOP petition was pending before the Family Court, Chengalpattu, the respondent tried to manhandle the petitioner and the same was condemned by the learned Trial Court Judge, he has not produce any evidence to substantiate the said allegations.

8. It is also to be pointed out that MC.No.16 of 2019 has been filed seeking maintenance under Section 125 of Cr.P.C. In that case the petitioner may appear for one or two hearings for giving evidence and for other hearings, his personal appearance is not required.

9. For the aforesaid reasons, this court is of the view that this court does not find any merits in this petition. Accordingly, this petition is dismissed. Consequently, connected Miscellaneous Petitions are closed. However taking into consideration the order passed by this Court in CrI.OP.No.15627 of 2019, to dispense with the personal appearance of the petitioner before the Trial Court, this court is inclined to grant the relief of dispensing with the personal appearance of the petitioner before the Trial Court in MC.No.16 of 2019, unless his personal appearance is specifically insisted by the Trial Court

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

drl

To

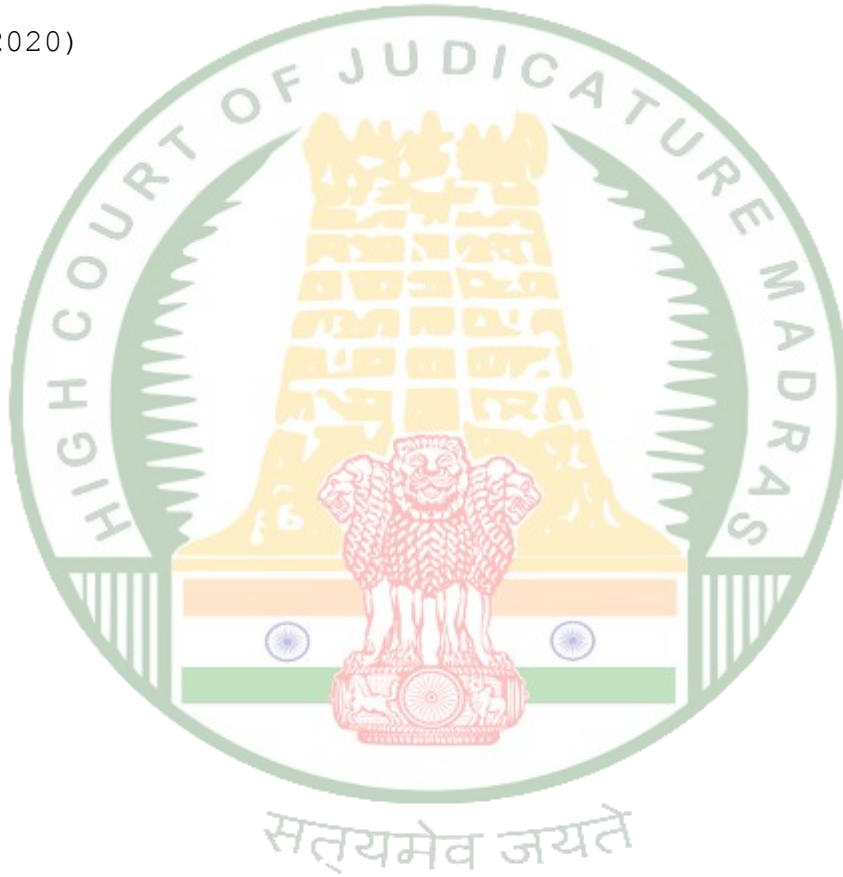
1.The Family Court, Chengalpattu.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.U.Vinnesan, Advocate SR.9748

CRL.O.P.No.27367 of 2019

BP(CO)
CB(03/11/2020)



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