

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.17235 OF 2016

G.Jayakumar,
S/o.Guruswamy

... Petitioner/Respondent

Vs.

Jayanthi,
D/o.Raghu

...Respondent/Petitioner

Prayer:

Criminal Original Petition filed under Section 407 Cr.P.C., to withdraw the petition in M.C.No.8 of 2014, on the file of the learned Judicial Magistrate No.I, Puducherry and to transfer the same to the file of the learned Family Judge, Puducherry.

For Petitioner: Mr.D.Ravichander

For Respondent: Ms.Saradha Devi,
Appointed by the Court to appear for the
respondent and to assist the Court.

ORDER

The Criminal Original Petition has been filed by the Petitioner/Respondent, seeking to withdraw the petition in M.C.No.8 of 2014, on the file of the learned Judicial Magistrate No.I, Puducherry and to transfer the same to the file of the learned Family Judge, Puducherry.

2.The Petitioner is the husband and respondent in M.C.No.8 of 2014, filed under Section 12 (1) of the Protection of Women from Domestic Violence Act, 2005 (herein after referred as D.V. Act), pending on the file of the learned Judicial Magistrate No.I, Puducherry.

3.The fact remains that the petitioner/husband had originally filed H.M.O.P.No.25 of 2014, before the learned

Subordinate Judge, Villupuram, against his wife seeking divorce, on the ground of wilful desertion and cruelty. Meanwhile, the respondent/wife had filed M.C.No.2 of 2014, on the file of the learned Family Judge, Puducherry, under Section 125 (1) (a) (b) of Cr.P.C., seeking maintenance. While so, at the instance of the wife, for transferring the petition in H.M.O.P.No.25 of 2014, this Court, passed an order dated 11.08.2014 in Tr.C.M.P.No.303 of 2014, transferring H.M.O.P.No.25 of 2014 which is now pending on the file of the learned Subordinate Judge, Villupuram, to be transferred to the file of the Family Court, Puducherry for joint trial, to be tried along with M.C.No.2 of 2013.

4.Pursuant to the order dated 11.08.2014, the divorce petition in H.M.O.P.No.25 of 2014, on the file of the learned Subordinate Judge, Villupuram, was transferred to the file of the learned Family Judge, Puducherry and the same was re-numbered as M.O.P.No.37 of 2015. While, these proceedings were pending on the file of the learned Family Judge, Puducherry, the respondent/wife had filed M.C.No.8 of 2014, under Section 12(1) of D.V. Act, 2005, on the file of the learned Judicial Magistrate No.I, Puducherry, seeking for a relief under Section 18 to 20 of D.V.Act, 2005. The petitioner has contested the same, by filing a counter, while so, in order to avoid multiplicity of proceedings, the present petition has been filed by the petitioner/husband, seeking to transfer the M.C.No.8 of 2014 and the same to be heard along with M.C.No.2 of 2014 and M.O.P.No.37 of 2015, which is pending on the file of the learned Family Judge, Puducherry.

5.Despite, the service of notice and printing of the name of the respondent, the respondent is not present before this Court today, thereby, this Court had appointed Ms.Saradha Devi, learned Government Advocate (Crl.Side), to represent the respondent in this case.

6.Mr.D.Ravichander, learned Counsel appearing for the petitioner/husband would submit that as per Section 26 of the D.V.Act, any relief sought for under Section 18, 19, 20, 21 & 22 of the D.V.Act, and also be claimed in any proceedings pending before the Civil Court, Family Court or the Criminal Court by the aggrieved person, the Respondent/wife had filed a separate petition, in M.C.No.12 of 2014, seeking maintenance, which is pending on the file of the Family Court. When such being so, there is no bar in transferring the present petition in M.C.No.8 of 2014, which is pending on the file of the learned Judicial Magistrate No.I, Puducherry, to the file of the Family Court to be tried along with M.C.No.2 of 2014 and M.O.P.No.37 of 2015. He would further submit that this Court in a recent decision rendered in Crl.O.P.No.28458 of 2021 and Batch matters, dated 18.01.2021, has held that the proceedings under the D.V.Act are Civil in nature and that the Court tried proceedings

under the D.V.Act is not a Criminal Court and thereby, there is no bar for the case, which is now pending on the file of the learned Judicial Magistrate No.I, Puducherry, being transferred to the file of the Family Court, Puducherry. He would submit that the parties involved and the issues involved are one and the same and thereby, it is necessary that the case has to be transferred to the file of the Family Court, Puducherry, to avoid multiplicity of proceedings and conflicted of decisions.

7.Per Contra, Ms.Saradha Devi, learned Government Advocate (Crl.Side) representing the respondent would submit that this Court, earlier in a Judgment in Captain CVS Ravi vs. Mrs.Ratna Sailaja reported in 2009 (1) MWN (Cr.) 472 has held that a petition filed under Section 12 of the D.V.Act, cannot be transferred from the file of the learned Magistrate, to the file of the Family Court. It has also been followed by this Court in P.Rajendran vs. Sasikala reported in 2017 (3) MWN (Cr.) 623 and she would submit that the petition for transfer is not maintainable.

8.In Captain CVS Ravi vs. Mrs.Ratna Sailaja stated supra this Court has held as follows: (paragraphs 13 to 15)

"13.In the decision reported in Munna Lal v. State of U.P., 1991 Crl.L.J. 1838 (DB) (referred to supra) and relied on by the learned counsel for the petitioner the question that came up for consideration before the Division Bench was as to whether the High Court has jurisdiction to transfer the case from one family Court to another Court in exercise of powers of transfer under C.P.C. and Cr.P.C. While considering that issue the Division Bench in paragraphs 14 and 15 of the said decision has held as under-

14.Family Court is a court, which decides the disputes in exercise of the States judicial power conferred on it by a statute in a judicial manner and declare the rights of the parties. Parties before the Family court are entitled to be heard in support of their case and they are also entitled to adduce evidence in order to prove their claim, they can cross-examine each other and adduce evidence. The Family court is obliged under law to settle and decide the dispute on the basis of the evidence produced by the parties. Family Court has all the attributes and satisfies all the ingredients of a Court. It has been declared by Section 7 of the Act to be a distinct court or subordinate Civil Court to which provisions of the C.P.C. and Cr.P.C. have been applied by Section 10 of the Act. It will not cease to be a court merely because some restrictions are imposed by Sections 11 to 16 of the Act.

15. Looked at from every single Family Court is a Court and as such, High Court has powers under Sections 22 to 24 of the C.P.C. to transfer a case relating to the matters dealt with by explanation to sub-section (1) of Section 7 of the Act and likewise has powers under Section 407 of the Cr.P.C. to transfer a case relating to Chapter IX, Cr.P.C. Thus it is clear that the question of transfer of an Application filed under Section 12 of the Act from the file of a Judicial Magistrate to the file of a Family Court was not an issue that came up for consideration before the Division Bench. Therefore, that decision has no applicability to the facts of this case. Here transfer is not sought for from one Family Court to another Family Court and the transfer sought for in this case is from the file of the Magistrate Court to the file of the Family Court. The Domestic Violence Act does not contain any provisions clothing jurisdiction on the Family Court to entertain an application filed under Section 12 of the Act. It may be true that the reliefs available under Sections 18 to 22 of the Act may also be claimed in a pending proceeding before the Family Court already initiated by the aggrieved person but from that it cannot be inferred that an independent application under Section 12 of the Act can be filed before the Family Court. So only an option is given to the aggrieved person to claim the reliefs available under Sections 18 to 22 of the Act in a pending legal proceedings initiated by such aggrieved person before the Family Court and therefore from such a liberty given to the aggrieved person an inference cannot be drawn to the effect that a pending application filed under Section 12 of the Act before the learned Magistrate can be transferred to the file of the Family Court. Unless the Court has been specifically empowered to entertain an independent application filed under Section 12 of the Act, transfer of a pending application filed under Section 12 of the Act from the file of the learned Magistrate to the file of the Family Court cannot be ordered."

The above view was followed by this Court in P. Rajendran case referred supra.

9. In reply, learned counsel for the petitioner would submit that subsequent to the Judgment of this Court in Captain CVS Ravi vs. Mrs. Ratna Sailaja, the Hon'ble Apex Court in Kunapareddy Alias Nookala Shankha Balaji vs. Kunapareddy Swarna Kumari reported in (2016) 11 SCC 774 has held that the proceedings under the D.V. Act, pending before the learned Judicial Magistrate are Civil in nature and the Judgment in Kunapareddy Alias Nookala Shankha Balaji vs. Kunapareddy Swarna

Kumari was not brought to the knowledge of this Court, when this Court later heard and decided P.Rajendran vs. Sasikala. Further, at that time the issue whether the proceedings under the D.V.Act, pending before the Judicial Magistrate Court are "Civil" in nature or "Criminal" in nature was also not canvassed and agitated before this Court. He would further submit that as on today, the legal position remains that the proceedings pending in respect of reliefs under Chapter IV of the D.V.Act, before the learned Judicial Magistrates are held to be "Civil" in nature and thereby, the Judgment in Captain CVS Ravi vs. Mrs.Ratna Sailaja mentioned supra will not operate against the present petition seeking to transfer the petition under Section 12 of the D.V.Act, pending before the Judicial Magistrate Court to the Family Court.

10.The relevant paragraph No.13 in Kunapareddy case (supra) is extracted hereunder:

"13.Procedure for obtaining order of reliefs is stipulated in Chapter IV of the DV Act which comprises Sections 12 to 29. Under Section 12 an application can be made to the Magistrate by the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person. The Magistrate is empowered, under Section 18, to pass protection order. Section 19 of the DV Act authorises the Magistrate to pass residence order which may include restraining the respondent from dispossessing or disturbing the possession of the aggrieved person or directing the respondent to remove himself from the shared household or even restraining the respondent or his relatives from entering the portion of the shared household in which the aggrieved person resides, etc. Monetary reliefs which can be granted by the Magistrate under Section 20 of the DV Act includes giving of the relief in respect of the loss of earnings, the medical expenses, the loss caused due to destruction, damage or removal of any property from the control of the aggrieved person and the maintenance for the aggrieved person as well as her children, if any. Custody can be decided by the Magistrate which was granted under Section 21 of the DV Act. Section 22 empowers the Magistrate to grant compensation and damages for the injuries, including mental torture and emotional distress, caused by the domestic violence committed by the appellant. All the aforesaid reliefs that can be granted by the Magistrate are of civil nature. Section 23 vests

the Magistrate with the power to grant interim ex parte orders. It is, thus, clear that various kinds of reliefs which can be obtained by the aggrieved person are of civil nature. At the same time, when there is a breach of such orders passed by the Magistrate, Section 31 terms such a breach to be a punishable offence."

11.The learned Government Advocate (Crl.Side) in reply would submit that the present petition has been filed under Section 407 Cr.P.C., seeking for transfer and if the Court is holding that the proceedings pending on the file of the Judicial Magistrate are Civil in nature, appropriate petition has to be filed under Article 227 Cr.P.C., or under Section 24 of Cr.P.C., for transfer of such application.

12.The learned counsel for the petitioner in reply would submit that the nomenclature of the petition is not decisive of the jurisdiction of the Court and that procedure is only the handmaid of justice and it is to come to the rescue and aid of justice as held in Pepsi Foods Ltd., vs. Special Judicial Magistrate reported in (1998) 5 SCC 749 and Nawab Shaquafath Ali Khan vs. Nawab lmdad jah Bahadur reported in (2009) 5 SCC 692. He would further submit that as per Explanation (d) and (f) to Section 7(1) (a) of the Family Courts Act shall have the jurisdiction exercisable by any District Court or any Subordinate Civil Court under any law for the time being in force, in respect of suits and proceedings of the nature referred to in the explanation and since, the relief claimed falls within the jurisdiction of the Family Court, there is no difficulty in the proceedings now pending on the file of the Judicial Magistrate No.I, Puducherry, being transferred to the file of the Family Court to be tried together. He would further submit that as per the explanation to Section 26 of the D.V.Act, the object is to avoid multiplicity of proceedings between the parties and the reliefs claimed under Chapter IV of the D.V.Act can also be claimed before the Civil Court, Family Court or the Criminal Court as the case may be and thereby it would be beneficial if the cases are transferred to the same Court.

13.In support of the above contention, the learned counsel would rely upon the Judgment of the Hon'ble Apex Court in Satish Chander Ahuja vs. Sneha Ahuja reported in (2021) 1 SCC 414, wherein, the Apex Court has held that Section 26 of the D.V.Act has to be interpreted in a manner to effectuate the purpose and object of the Act and determination of the claim should be considered to avoid multiplicity of proceedings.

14.The learned counsel for the petitioner would also rely on the Judgment of this Court in Vijaya Baskar vs. Suganya Devi

reported in (2010) SCC Online MAD 5446. The relevant paragraph is extracted hereunder:

"12.The term 'civil law' twice used therein is not an empty formality and that would exemplify and demonstrate, display and convey that the proceedings at the first instance should be civil in nature. The legislators were conscious of the fact that all of a sudden if criminal law is enforced on the husband and his relatives, certainly that might boomerang and have deleterious effect in the matrimonial relationship between the husband and wife. The object of the Act is that the victim lady should be enabled by law to live in the matrimonial family atmosphere in her husband/in-laws' house. It is not the intention of the said enactment to enable the lady to get snapped once and for all her relationship with her husband or the husband's family and for that, civil law and civil remedies are most efficacious and appropriate and keeping that in mind alone in the Act, the initiation of action is given the trappings of civil proceedings which the authorities including the Magistrate responsible to enforce the said Act should not loose sight of."

13.The status of the respondents should not be treated as that of accused and that would spoil the very tenor and tone with which the Act has been drafted. Keeping that in mind alone, Section 13 of the Act would contemplate only service of notice on the respondents and Rule 6 (5) of the Protection of Women from Domestic Violence Rules, would contemplate that the applications under Section 12 shall be dealt with inconformity with Section 125 of the Code of Criminal Procedure, 1973.

14.It is obvious that the proceedings under Section 125 Cr.P.C., are not in stricto sensu criminal proceedings.

15.After the passing of the protection order, if there is any violation, then only, such violation would constitute an offence under Section 31 if the said Act and Section 32 of the Act would indicate that such violation would amount to a cognizance and non-bailable offence.

16.It is, therefore, clear that the initial proceedings are civil in nature and the learned Magistrate should be extraordinary careful in selecting the appropriate persons as the respondents. Simply because the application under Section 12 of the Act might refer to large number of persons as respondents, the learned Magistrate is not duty bound to issue notice to all of them and there should be application of mind on the part of the Magistrate in selecting the respondents as to whom notice should be sent, as otherwise having too many respondents before the learned Magistrate, would constitute a stumbling block for arriving at a conclusion in summary proceedings. The famous adage "Too much of anything is good for nothing" should not be forgotten."

15.He would further submit that now it has been settled by various decisions that the proceedings being held to be Civil in nature, no prejudice will be caused to the respondent / wife by transferring this petition, since the petitioner and the respondent have been already contesting the maintenance petition and the divorce proceedings which are pending before the Family Court and would seek for transfer of the petition in M.C.No.8 of 2014, pending on the file of the learned Judicial Magistrate No.I, Puducherry to the file of the Family Court, Puducherry.

16.Heard the learned counsels on either side, perused the materials placed on record.

17.The petitioner is the husband. The marriage between the petitioner / husband and the respondent/wife was solemnised on 30.10.1998 at Villupuram. Thereafter, the petitioner/husband had filed a petition in H.M.O.P.No.25 of 2014, for divorce, on the ground of wilful desertion and cruelty before the Sub Court, Villupuram. While so, the respondent/wife had approached this Court, seeking for transfer of the divorce petition from the file of the Sub Court, Villupuram to the Family Court, Puducherry and this Court by an order dated 11.08.2014, in Tr.C.M.P.No.3030 of 2014 had transferred H.M.O.P.No.25 of 2014 from the file of the Sub Court, Villupuram to the Family Court, Puducherry to be tried along with M.C.No.2 of 2014, which was already filed by the respondent/wife and pending on the file of the Family Court, Puducherry. After transfer to the file of the Family Court, Puducherry, H.M.O.P.No.25 of 2014 was re-numbered as M.O.P.No.37 of 2015 and as such proceedings in M.C.No.2 of 2014 and M.O.P.No.37 of 2015 pending between the parties are now on the file of the Family Court, Puducherry. While so, the

respondent / wife had filed M.C.No.8 of 2014, on the file of the learned Judicial Magistrate No.I, Puducherry, seeking various relief under the D.V.Act. At that stage, the husband had filed the present petition seeking for transfer of M.C.No.8 of 2014 to be tried along with one other case in M.C.No.2 of 2014 and M.O.P.No.37 of 2015 pending on the file of the learned Family Judge, Puducherry.

18.This Court, earlier in Captain CVS Ravi vs. Mrs.Ratna Sailaja and P.Rajendran vs. Sasikala referred supra has held that the petition seeking for transfer of proceedings under the D.V.Act, pending before the Judicial Magistrates cannot be transferred to the file of the Family Court. Subsequently, the Hon'ble Supreme Court in Kunapareddy Alias Nookala Shanka Balaji vs. Kunapareddy Swarna Kumari reported in (2016) 11 SCC 774 has held that the proceedings seeking for reliefs stipulated in Chapter IV under the D.V.Act are "Civil" in nature and the Court hearing the proceedings under the D.V.Act are deemed to be Civil Courts. This Judgment was not brought to the notice of this Court and the issue was not agitated when this Court heard the case of P.Rajendran v. Sasikala (supra).

19.It is relevant to state that when the case in P.Rajendran vs. Sasikala reported in 2017 (3) MWN (Cr.) 623, was argued before this Court this point was neither canvassed nor agitated and this Court following the earlier Judgment of this Court in Captain CVS Ravi vs. Mrs.Ratna Sailaja reported in 2009 (1) MWN (Cr.) 472, has held that the proceedings pending under the D.V.Act, before the learned Judicial Magistrate, cannot be transferred to the file of the Family Courts at the time. Yet another order of this Court in Vijaya Baskar vs. Suganya Devi reported in (2010) SCC Online MAD 5446 was also not referred before this Court.

20.Further, recently this Court in Dr.P.Pathmanathan and Others vs. V.Monica and Another reported in (2021) 1 MLJ (Cr.) 311 after analysing various Judgments of the Hon'ble Apex Court as well as this Court and various other Courts has held that the petition filed seeking reliefs under Section 12 (under Chapter IV) of the Domestic Violence Act, on the file of the Judicial Magistrates are "Civil" in nature.

21.This Court is of the opinion that the proceedings in M.C.No.8 of 2014 seeking reliefs under Section 12 and under Chapter IV of the D.V.Act being Civil in nature, there cannot be a bar for transferring the proceedings to the file of the Family Court as stated above.

22.Now, a question arises that, when a petition has been filed under Section 407 Cr.P.C., whether this Court has got

powers to transfer the cases from the Judicial Magistrate to the file of the Family Court?

23. In *Pepsi Foods Ltd., vs. Special Judicial Magistrate* reported in (1998) 5 SCC 749, the Apex Court has held as

"Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by subordinate courts. The present petition though filed in the High Court as one under Article 226 and 227 could well be treated under Article 227 of the Constitution."

24. Further in *Nawab Shagafath Ali Khan and Others vs. Nawab Imdad Jah Bahadur and Others* reported in (2009) 5 SCC 162, the Apex Court has held that

"48. If the High Court had the jurisdiction to entertain either an appeal or a revision application or a writ petition under Articles 226 and 227 of the Constitution of India, in a given case it, subject to fulfilment of other conditions, could even convert a revision application or a writ petition into an appeal or vice versa in exercise of its inherent power. Indisputably, however, for the said purpose, an appropriate case for exercise of such jurisdiction must be made out."

25. In this case, this Court is of the opinion that an appropriate case for exercise of such jurisdiction has been made out. In view of the above, this Court assumes power to transfer the case by converting the petition filed under Section 407 Cr.P.C., to one under Article 226 & 227 of the Constitution of India in exercise of inherent powers in the interest of justice.

26.In view of the above, the proceedings now pending in M.C.No.8 of 2014 on the file of the learned Judicial Magistrate No.I, Puducherry is withdrawn and transferred to the file of the Family Court, Puducherry, to be tried along with the petitions in M.C.No.2 of 2014 and M.O.P.No.37 of 2015.

27.This Criminal Original Petition stands allowed accordingly.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.I,
Puducherry.
- 2.The Judge,
Family Court, Puducherry.
- 3.The Chief Judicial Magistrate,
Puducherry.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.8385

CrI.O.P.No.17235 of 2016

GJ(CO)

CS/21/04/2021