



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.20157 of 2021

Dr. Joshy Madukkakuzhy,
S/o. Abraham

... Petitioner

Versus

G.Elizabeth Meera,
D/o. Mr. George Antony

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the VII Addl. Family Court Judge to number the unnumbered Miscellaneous Petitions seeking to dispense with the physical presence of the petitioner herein for the hearing and consequently permit him to appear through video conference as and when required in M.C.No.244 of 2021 on the file of VII Additional Judge, Family Court at Chennai.

For Petitioner : Mr.S.Rajasekar

ORDER

(This case has been heard through video conference)

The petitioner, estranged husband of respondent filed a petition seeking a direction directing the VII Addl. Family Court, Chennai to number the unnumbered miscellaneous petitions filed in M.P.SR.No.6549 of 2021 seeking to dispense with the physical presence of the petitioner for the hearing and consequently, permit him to appear through video conference as and when required in M.C.No.244 of 2021.

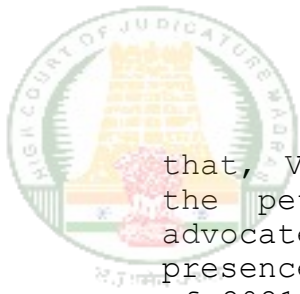
2. On perusal of petition filed under Sec.125 of Cr.P.C. by the respondent, it is seen that the marriage between the petitioner and the respondent taken place on 24.08.2006 and thereafter, they were living happily only for few days. The parents of the respondent provided 350 grams of jewels, gave a sum of Rs.50 lakhs by way of cash and a sum of Rs.57 lakhs by way of bank account transfer. The petitioner is a person with suspicious attitude and he treated the respondent roughly and badly. Further, the petitioner restrained her to attend marriage ceremony of her brother and also not permitted her to



participate in any of the family functions. The father of the petitioner was keeping track of respondent by using some technical gadgets. It is admitted that the petitioner herein is a Doctor by profession in Germany and after the marriage, the respondent joined her husband at Germany and out of wedlock, two children born to them, one is a male child viz., Rahul, aged about 11 years and another one is a female child viz., Riya, aged about 9 years and they continued to live in Germany. The petitioner inducing bad name about the respondent to the children and attempted to take them away from the respondent. Further, the respondent's movement was restricted and she was not allowed to meet her relatives and friends and also not allowed to meet anyone. Further, when the same was questioned, she was forcibly sent out from the matrimonial home. Hence, she filed a petition seeking for maintenance under Sec.124 and 125 of Cr.P.C.

3. The contention of the petitioner is that it is an admitted case that the petitioner and the respondent are living in Germany after marriage. They have two children aged about 11 years and aged about 9 years and they are living happily. Recently, on 04.03.2021 she came to India to meet her parents, thereafter, she not returned back to Germany and now, she filed the above petition and also filed Domestic Violence complaint. The respondent left her children into the care of petitioner and he is a Surgeon, Doctor by profession and as Surgeon, he is busy with several appointments in Germany, hence, he is burdened with responsibility to take care of the children, the surgeries cannot be cancelled, otherwise, he would face the consequences and face penalty. Further, the profession of the petitioner would become questionable one. In view of the same, the petitioner is unable to attend the hearing on 07.10.2021. However, he had given power of attorney and also engaged an advocate to represent the petitioner before the Family Court, Chennai. The power of attorney and his advocate appeared and filed necessary petitions before the VII Addl. Family Court, which was not entertained by the Family Court Judge. Thereafter, on the same day, the petitioner was set exparte. Subsequently, the petitioner came to India on 20.10.2021, filed petition to set aside the exparte order and other necessary petitions before the VII Addl. Family Court on 21.10.2021 and also filed his counter in the main case. Immediately on presentation of petitions, the Presiding Officer directed the petitioner to serve copy of petitions and counter to the respondent's counsel, the same was served and thereafter, it was not entertained. The Family Court Registry is not numbering any of the petitions and the exparte remains as it is. Now, the petitioner gone back to Germany, due to prior engagement of surgeries.

4. The limited prayer sought by the petitioner herein is



that, VII Addl. Family Court to number the petitions filed by the petitioner through his power of attorney, and by his advocate. To set aside the ex parte order, to dispense with the presence of the petitioner, to prosecute the case in M.C.No.244 of 2021 and file any other petitions in this regard. Since it is a limited prayer, notice to the respondent is dispensed with.

5. On considering submissions and on perusal of materials, finding that the petitioner is a Surgeon in Germany, which is not in dispute, after marriage, the petitioner and the respondent were living in Germany and they have two children. Now, both the children are in the care of petitioner, the respondent came to India during March 2021 and filed the above petition and domestic violence complaint. In matrimonial proceedings before the Family Court, parties are permitted to be represented through power of attorney and counsel and further, the petitioner gives an undertaking that he would make himself available through video conference whenever his evidence is required to be recorded and to answer any queries.

6. In view of the same, the VII Addl. Family Court Judge is directed to receive the petitions filed by the petitioner in the file of the case, number the same and to dispose the case on merits after hearing power of attorney and his advocate.

7. With the above direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

rpp

TO

1.The VII Additional Judge,
Family Court, Chennai.

2.The Public Prosecutor,
High Court, Madras 104.

+2cc to Mr. S.Rajasekhar, Advocate, S.R.No.55292

CRL.O.P.No.20157 of 2021

NMI (CO)
GN(28/10/2021)