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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.O.P.No.23213 of 2021

and

CRL.M.P.Nos.12719 & 12720 of 2021

Alexander

... Petitioner

Vs.

Chandralekha

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertains to impugned proceeding in M.C.No.1 of 2021, on the file of the Judicial Magistrate No.II, Virudhachalam and quash the same.

For Petitioner : Mr.P.R.Thiruneelakandan

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in M.C.No.1 of 2021, on the file of the Judicial Magistrate Court No.II, Virudhachalam.

2. The petitioner and the respondent herein are husband and wife and the marriage between them was solemnized on 11.07.2018. Thereafter, due to matrimonial disputes the respondent and his husband were living separately from the matrimonial home. Under this circumstance, the petitioner filed a petition for divorce in HMOP.No.9 of 2020 before the Sub Court, Chidambaram and the respondent also filed a petition for restitution of conjugal rights in HMOP.No.1 of 2021 before the Sub Court, Chidambaram. While pending the matrimonial disputes before the Sub Court, Chidambaram, the respondent herein file a petition for maintenance in M.C.No.1 of 2021 before the Judicial



Magistrate No.II, Virudhachalam. Hence, the petitioner prayed to quash the proceedings in MC.No.1 of 2021 contending that Family Court alone have jurisdiction since from the establishment of Family Court at Cuddalore and not the Judicial Magistrate Court.

3. At the time of argument, the learned counsel for the petitioner submits that the maintenance case is pending before the Judicial Magistrate No.II, Virudhachalam. Based upon Sections 7 and 8 of the Family Court Act, after formation of the Family Court, the respondent / wife ought to have file the Maintenance Case proceedings before the Family Court and not before the Magistrate Court, where the case is pending in M.C.No.1 of 2021 before the Judicial Magistrate No.II, Virudhachalam.

4. As per Section 7 deal with jurisdiction of the Family Court is read as follows:-

'7.Jurisdiction - (1) Subject to the other provisions of the Act, a Family Court shall--

(a) have and exercise all the jurisdiction exercisable by any district Court or any subroinate 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

(b) be deemed, for the purpose of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the family Court extends.

Explanation.--- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature namely;---

(a) a suit or proceedings between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage,

(b) a suit or proceeding fro a declaration as to the validity of a marriage or as to the matrimonial status of any person;

© a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.

(d) a suit or proceeding for an order of injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to



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the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise---

the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of Code of Criminal Procedure, 1973 (2 of 1974); and

such other jurisdiction as may be conferred on it by any other enactment.

5. As per the said provisions of law, the Family Court is entitled to exercise the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974).

6. Based on the said proposition of law, the learned counsel for the petitioner submits that since the Family Court Cuddalore alone having jurisdiction to deal with the maintenance case, thereby, the Jurisdictional Magistrate Court No.II, Virudhachalam has no power to conduct the M.C No.1 of 2021 filed by the respondent/wife.

7. But with regard to jurisdictional aspect of the Family Court, as per Section 3 of the Family Court Act as reads as follows;-(1)

For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,--

(a) shall, as soon as may be after the commencement of this Act, establish for every area in the State comprising a city or town whose population exceeds one million, a Family Court;

(b) may establish Family Courts for such other areas in the State as it may deem necessary.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase reduce or alter such limits.

8. So, harmonious interpretation of Sections, 3, 7 and 8 clearly indicates that there is no bar against the parties from approaching other Courts outside the jurisdiction of the family Court. The exclusion of the jurisdiction of the Courts is



confined to the area over which the family Court exercises jurisdiction. As per the notification in the High Court of Madras, Chennai ROC.No.720/2015/G(F.C.), dated 12.04.2017, the Cuddalore Family Court is having jurisdiction only local limits of the Cuddalore City, inclusive of Cuddalore Taluk. Therefore, the Virudhachalam Taluk not come under the jurisdiction of the Family Court as per the above notification . Hence, the maintenance filed by the respondent who is residing within the jurisdiction of Court of Virudhachalam is entitled to filed the Maintenance case before the concerned jurisdiction.

9. Therefore, the objection raised by the petitioner is that the maintenance case pending before the Judicial Magistrate No.II, Virudha chalam, filed by the respondent/wife is not entitled to proceed of M.C.No.1 of 2021 before the Judicial Magistrate No.II Virudhachalam due to the existence of Family Court is not sustainable, accordingly his objection is rejected.

10. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Virudhachalam.

CRL.O.P.No.23213 of 2021
and
CRL.M.P.Nos.12719 & 12720 of 2021

BS(CO)
SU(22/03/2022)