



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.51 of 2021

and

C.M.P. (MD)No.1024 of 2021

WEB COPY

G. Prasanna Dhivya

... Petitioner

-vs-

D.Sathishkumar

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw and transfer the petition in HMOP No.170 of 2019 on the file of the Sub Court, Pollachi to Sub Court, Theni to be tried along with HMOP No. 94 of 2018 pending on the file of the Sub Court, Theni, Theni District

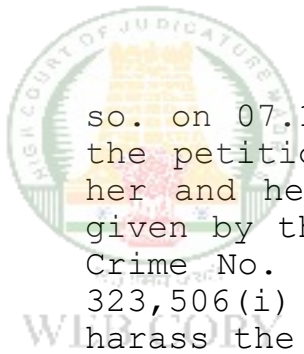
For Petitioner : Mr.M.Kaliraj

For Respondent : No appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw and transfer the petition in HMOP No.170 of 2019 on the file of the Sub Court, Pollachi to Sub Court, Theni to be tried along with HMOP No. 94 of 2018 pending on the file of the Sub Court, Theni,

2. The learned counsel for the petitioner would submit that the marriage between the petitioner and the respondent was solemnized on 01.06.2014 at Ragaventhira Thirumana Mahal, Pollachi, Coimbatore District as per Hindu rites and customs. Soon after the marriage the respondent took the petitioner to Pollachi and they set up their a matrimonial home at Pollachi. He would further submit that within four months of marriage the attitude of the respondent changed and the respondent and his parents started ill treating the petitioner, verbally abused her and demanded more dowry. Thereafter the petitioner and the respondent shifted their residence to Thuraipakkam, Chennai and were living there for some time. Subsequently after some time the respondent started harassing the petitioner demanding more dowry from the parents of the petitioner and the petitioner was driven out of the matrimonial home on account of her inability to comply with the demand. The petitioner has filed a divorce petition in HMOP No. 94 of 2018 on the file of the Sub Court, Theni on the ground of cruelty. The respondent had appeared before the Court and filed counter in HMOP No. 94 of 2018. While

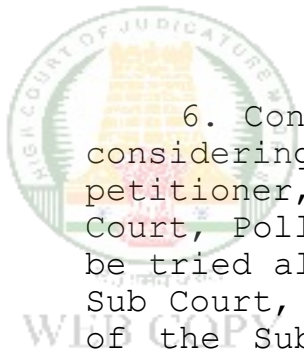


so. on 07.10.2019 after hearing the respondent came to the house of the petitioner, abused her in filthy language and also threatened her and her parents to withdraw the HMOP. Based on the complaint given by the father of the petitioner a case has been registered in Crime No. 946 of 2019 for the offences under Sections 448,294(b), 323,506(i) of IPC. While the HMOP 94 of 2018 is pending in order to harass the petitioner the respondent has filed HMOP 170 of 2019 on the file of the Sub Court, Pollachi under Section 9 of Hindu Marriage seeking for restitution of conjugal rights with the intention to harass the petitioner. He would further submit that the respondent had the audacity to go to the house of the petitioner and threaten the petitioner and her family members to withdraw the HMOP No. 94 of 2018 and there is every possibility that if the petitioner attends the Court at Pollachi, she might be harassed by the respondent, thereby the petitioner seeks transfer the petition in HMOP No.170 of 2019 on the file of the Sub Court, Pollachi to Sub Court, Theni to be tried along with HMOP No. 94 of 2018.

3. Heard the learned counsel for the petitioner. Despite service of notice and name printed in the cause list, there is no representation for the respondent. Though private notice has been sent, proof not filed.

4. The marriage between the petitioner and the respondent was solemnized on 01.06.2014 at Ragaventhira Thirumana Mahal, Pollachi, Coimbatore District. The petitioner being a lady has filed a petition in HMOP No.94 of 2018 on the file of the Sub Court, Theni. The respondent had entered appearance and filed counter. The respondent had threatened the petitioner and her family members, for which a case has been registered in Crime No. 946 of 2019 for the offences under Sections 448,294(b), 323,506(i) of IPC. Only after that the respondent has filed petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights before the Sub Court, Pollachi. Further there is also a threat to the petitioner. It is also seen that only to harass the petitioner the respondent has filed a petition in HMOP No. 170 of 2019 before the Sub Court, Pollachi

5. The Hon'ble Apex Court in the case of ***Vaishali Shridhar Jagtap vs. Shridhar Vishwanath Jagtap*** reported in ***(2016)14 SCC 356*** has held that ***while deciding the transfer of matrimonial proceedings under Section 25 of the Civil Procedure comparative hardship faced by the wife has to be taken into account.*** Further in the case of ***Amitha Shah vs- Virendar Lal Shah***, the Hon'ble Supreme Court reported in ***(2003)10 SCC 609*** has held that ***the convenience of the wife must be taken into account while deciding the petition for transfer.***



6. Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner, HMOP No.170 of 2019 is withdrawn from the file of Sub Court, Pollachi and transferred to the file of Sub Court, Theni to be tried along with HMOP No.94 of 2018, for disposal as per law. The Sub Court, Pollachi, is directed to transmit the papers to the file of the Sub Court, Theni. The Sub Court, Theni, is directed to dispose HMOP Nos.170 of 2019 and 94 of 2018 on merits and in accordance with law as expeditiously as possible.

7. In the result, this Transfer Civil Miscellaneous Petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To:

1. The Sub Judge, Theni
2. The Sub Judge, Pollachi

Tr.C.M.P. (MD) No.51 of 2021
and

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MGJ(17.08.2021) 3P 3C