



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 09.09.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.6309 of 2021

and

Crl.MP (MD)No.3614 of 2021

WEB COPY

Joseph Praveen Fernandes

... Petitioner/Respondent

Vs.

Clerisha Fernandes

... Respondent/Respondent

Prayer: Criminal Original Petition is filed under Section 407 Cr.P.C., to withdraw the case in M.C.No.74 of 2020 on the file of the Family Court, Thoothukudi, and transfer the same to any other competent Court in the combined Courts Building, Madurai.

For Petitioner : Mr.M.A.Jinnah

For Respondent : Mr.S.Senthil Sankaranatha Kumar

ORDER

This petition is filed seeking transfer of M.C.No.74 of 2020, on the file of the Family Court, Thoothukudi, to any other competent Court in the Combined Courts Building, Madurai.

2. Case in brief:-

(i) The petitioner and the respondent are the husband and wife. They married each other, on 26.10.2015, as per the Christian customs and rites. They got a child by name, Yasa Marisha Judeeya. The respondent was deserted by the petitioner and now, she is residing in her parental home along with her child. So, she filed a maintenance petition in M.C.No.74 of 2020 before the Family Court, Thoothukudi District, and she appeared before the Trial Court on various dates.

(ii) During the trial proceedings, it came to the notice of the petitioner that one Selvin, who is the uncle of the respondent, who is a practicing Advocate in Thoothukudi Court, induced the Bench Clerk of the concerned Court to post the case within short time. Further, the petitioner was also harassed and abused in filthy language and threatened with dire consequences. On 07.04.2021, the petitioner gave a complaint before the learned Principal District Judge, Thoothukudi, since there is no Judge, he gave a complaint to the In-charge Court namely, the I Additional District Judge, Thoothukudi, through registered post. After knowing about the complaint, the above said Selvin threatened the petitioner that he must live with the respondent otherwise he will be killed. So, he



may not get any proper fair trial before the Trial Court. Hence, this petition.

3.Heard both sides.

4.The matrimonial dispute between the husband and wife. The proceeding is pending from the year 2020. During the course of arguments, the learned counsel for the petitioner would submit that on one occasion, the petitioner was chased away from the Court premises. Based upon which, a complaint was given to the Presiding Officer, Thoothukudi.

5.But, however, the learned counsel for the respondent strenuously objected the above such argument and no such incident has been really took place and no complaint was given to the Presiding Officer, Thoothukudi.

6.Whatever it may be, it appears that the respondent is now, residing in Thoothukudi. The Maintenance Case, which is pending before the Family Court, Thoothukudi District, can not be transferred to Madurai, simply because, the petitioner is residing in Madurai. It is settled basic principle that in case of matrimonial dispute, only the convenience of the wife only deserves consideration.

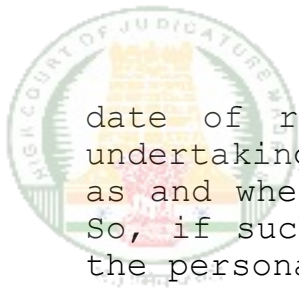
7.Further, the petitioner submitted a copy of the complaint, dated 12.04.2021, to the Presiding Officer, Thoothukudi or to the Principal District Judge, Thoothukudi, regarding the alleged occurrence, dated 07.04.2021. After a lapse of 5 days, complaint has been given by him. Without any basis, the allegation against one Mr.Selvin, who is the uncle of the respondent, also a practicing Advocate, that he is influencing the Court proceedings, has been made. Such a baseless allegation, cannot be taken into account, by this Court, for transferring the matrimonial dispute.

8.I find that there is no reason, to transfer the matrimonial dispute, pending before the Family Court, Thoothukudi. It appears that simply because, the petitioner is residing in Madurai, this petition has been filed seeking transfer of the Maintenance Case to Madurai. So, such sort of prayer cannot be entertained.

9.But, however, in the facts and circumstances, I am of the considered view that this petition can be dismissed with the following direction:-

(i) The grievance of the petitioner can be redressed to some extent.

(ii) The personal appearance of the petitioner is dispensed with before the Family Court, Thoothukudi, on condition that he must appear before the Family Court, Thoothukudi, within 15 days from the



date of receipt of a copy of this order and he shall file an undertaking affidavit that he will appear before the concerned Court as and when required. He must engage a the lawyer to represent him. So, if such undertaking is given, the Trial Court may dispense with the personal appearance of the petitioner.

10. With the above said conditions, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Family Court,
Thoothukudi.

+1 CC to M/s.S.SENTHIL SANKARA NATHA KUMAR, Advocate (SR-28877[F]
dated 13/09/2021)

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RS (24.09.2021) 3P 3C