



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P. (MD) No.234 of 2021

and

C.M.P(MD) No.4401 of 2021

Karthika

... Petitioner/Respondent

Vs.

M.Mathana Vijayan

... Respondent/Petitioner

PRAYER: Transfer Civil Miscellaneous Petition is filed under Section 24 of the Code of Civil Procedure, to withdraw the H.M.O.P.No.771 of 2020 on the file of the Learned Family Court, Tiruppur, and transfer the same to the Learned Sub Court, Periyakulam.

For Petitioner : Mr.R.Shankar Ganesh
For Respondent : No Appearance

O R D E R

The present Transfer Civil Miscellaneous Petition is filed to withdraw H.M.O.P.No.771 of 2020 on the file of the Family Court, Tiruppur, and transfer the same to the file of the Subordinate Court, Periyakulam.

2.The learned Counsel for the petitioner would submit that the petitioner is a native of Periyakulam. While she was working at Tiruppur, the respondent was a neighbour and they fell in love and got married on 05.07.2010 at Arulmighu Palani Murugan Temple. The marriage was opposed by the family members of both the petitioner and the respondent. After some time, both families accepted their marriage and reception was held on 16.07.2010. Out of wedlock, the petitioner delivered a male child namely, Sanjai, on 07.05.2011. There was frequent quarrels between the petitioner and the respondent and the respondent used to physically harass the petitioner and thereby, the petitioner was forced to leave the matrimonial home. The respondent has filed a petition in H.M.O.P.No.380 of 2014 on the file of the Subordinate Court, Tiruppur and the same was dismissed and then they were reunited at the intervention of the family elders.

3. While so, the respondent developed an illicit relationship with one Suriya, thereby, the petitioner lodged a



complaint before the Thenkarai Police Station, Periyakulam and the respondent agreed to get rid of the illicit relationship with her and join with the petitioner. Thereafter, the respondent developed another illicit relationship with one Suganthi and when it was questioned by the petitioner, she was assaulted by the respondent. Later, the petitioner was driven out from the matrimonial home and the petitioner and her child are under the shelter of her parents. Since the respondent did not maintain the family, the petitioner has filed Domestic Violence Case in D.V.C.No.4 of 2021 on the file of Judicial Magistrate, Periyakulam, which is pending. While so, the respondent has filed H.M.O.P.No.280/2019 on the file of the Sub Court, Tiurppur seeking for divorce and later the case has been transferred to the file of the Family Court, Tiruppur, which was renumbered as H.M.O.P. No.771 of 2020. The petitioner being a lady finds it difficult to travel from Periyakulam to Tiruppur to attend each and every hearing. Further, the respondent is attending the case in D.V.C.No.4 of 2021 before the Learned Judicial Magistrate Court, Periyakulam.

4.The learned counsel for the petitioner would further submit that in similar circumstances, the Hon'ble Apex Court taking into consideration of the inconvenience and the comparative hardship faced by the petitioner/wife and her male child, had directed to transfer the cases to be tried in Courts near to the petitioner. Thereby, she seeks for transfer.

5.Heard the learned counsel for the petitioner. Despite service of notice on the respondent and name being printed in the cause list, there is no representation on behalf of the respondent.

6.The Hon'ble Apex Court in the case of ***Vaishali Shridhar Jagtap Vs. Shridhar Vishwanath Jagtap*** reported in ***(2016)14 SCC 356*** held that ***while deciding the transfer of matrimonial proceedings, 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*** held that ***the convenience of the wife must be taken into account while deciding the petition for transfer.***

7.Considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the petitioner, HMOP. No.771 of 2020 is withdrawn from the file of the Family Court, Tiruppur and transferred to the file of Subordinate Court, Periyakulam, for disposal as per law. The Family Court, Tiruppur, is directed to transmit the papers to the file of the Subordinate Court, Periyakulam, forthwith. The learned Subordinate Judge, Periyakulam, is directed to dispose of the same on merits and in accordance with law as expeditiously as possible.



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

Sd/-

Assistant Registrar (CS-III)

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// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rm/nsr

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

1. The Judge
The Family Court,
Tiruppur.

2. The Subordinate Judge,
Periyakulam.

+1 CC to M/s.DICTUM LAW FIRM, Advocate (SR-30537[F] dated
28/09/2021)

Tr.C.M.P. (MD) No.234 of 2021
24.09.2021

SRK(CO)
KB(22.10.2021) 3P 4C