



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.07.2021

Delivered On: 19.08.2021

CORAM

THE HONOURABLE **MR. JUSTICE G. ILANGO VAN**

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Crl.O.P.(MD).No.8478 of 2021
and Crl.M.P.(MD).No.4361 of 2021

M.Vivekkumar

.. Petitioner/1st Respondent
Vs.

1.A.Divya Bharathi

2.Minor Resiga

(Rep. by her mother - 1st respondent)

.. Respondents 1 & 2/Petitioners

3.M.Mariyappan

4.M.Panchali @ Rani

5.M.Dinesh Kumar

6.D.Pappathi

7.M.Senbagavalli

8.Rukmani

... Respondents 3 to 8/
Respondents 2 to 7.

Prayer: This Criminal Original Petition is filed under Section 407 of Cr.P.C., to transfer the case in DVOP.No.3 of 2021 pending before the Judicial Magistrate Court at Thirumangalam to the Family Court, Madurai or to any other competent Court at Madurai.

For Petitioner : Mr.M.S.Parthiban

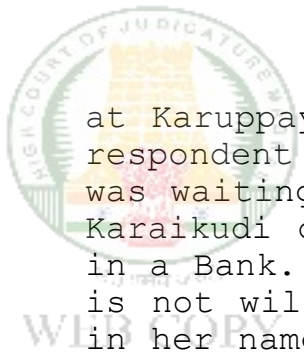
For Respondent : Mr.J.Gunaseelan Muthiah for R1 & R2

ORDER

This petition has been filed seeking transfer of D.V.O.P.No.3 of 2021, pending on the file of the learned Judicial Magistrate, Thirumangalam to the file of the Family Court, Madurai or any other competent Court at Madurai.

2.The facts in brief:

The parties are married each other, on 28.07.2017, as per Hindu Customary rites. After their marriage, the petitioner and the first respondent lived in the petitioner's father's house situated

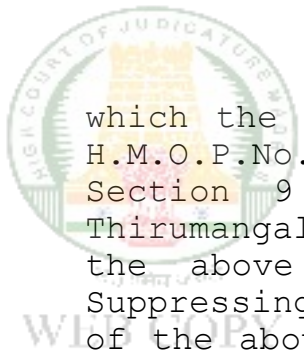


at Karuppayurani for few days. Right from the first day the first respondent is not co-operating with the petitioner. The petitioner was waiting for a good day to come. Later he shifted his family to Karaikudi due to his transfer, since he was working as an employee in a Bank. The first respondent later told the petitioner that she is not willing to live with him. She demanded transfer of property in her name. The petitioner refused to do so. Hence, she left the matrimonial home and went to the parental home. After some compromise, she returned to the matrimonial home. Thereafter also, there was no change in the attitude. The first respondent's family was creating problem which was also intimated to the police. Enquiry was also held. In the meantime, the first respondent gave birth to a female child, on 23.03.2019. Even after the birth of the child, there was no change in her attitude. She even did not allow the petitioner and his parents to visit the child. So because of her attitude, the petitioner filed a petition seeking divorce in H.M.O.P.No.141 of 2020, before the Sub Court, Madurai and it is pending and after that, the first respondent filed D.V.O.P.No.3 of 2021, seeking reliefs under Sections 17, 19(1)(c), 19(7), 20(d), 22 and 23 of the Protection of Women from Domestic Violence Act before the Judicial Magistrate Court, Thirumangalam. The first respondent's father is working as a Sub Inspector. So, the petitioner is frightened to attend the case at Thirumangalam. Moreover, now the petitioner is working in Jeyamkondam, which is 300 kms. faraway from Madurai. Therefore, he is not in a position to attend the hearings in D.V.O.P.No.3 of 2021, filed by the petitioner on the file of the Judicial Magistrate Court, Thirumangalam as well as for the divorce case in H.M.O.P.No.141 of 2020 filed by the petitioner on the file of the Sub Court, Madurai. On that ground, this petition is filed.

3.Heard both sides.

4.This is a case of transfer of DVOP from the file of Judicial Magistrate Court, Thirumangalam to the file of the Family Court, Madurai. The ground on which the petition has been filed are not serious in nature. Only the inconvenience faced by the petitioner, because of the long distance in travelling from Jeyamkondam to Thirumangalam for attending the case cannot be a strong ground for transfer. Similarly, the ground that because of the first respondent's father is working as a Sub Inspector of Police is afraid of attending the concerned Court is also not a valid ground. So these two grounds has to be rejected at the outset. Next ground mentioned in the petition is that he has filed a divorce petition in H.M.O.P.No.141 of 2020 before the Sub Court, Madurai. So, on that ground, this petition may be transferred to the Family Court, Madurai.

5.The learned counsel for the respondent will oppose this petition on the ground that the first two grounds are not at all serious. It has been held so by me also. The main ground on



which the objection is raised is that she has filed a petition in H.M.O.P.No.119 of 2020 for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, before the Sub Court, Thirumangalam. In this petition, he has suppressed the pendency on the above said petition before the Sub Court, Thirumangalam. Suppressing this fact, an order has been obtained seeking transfer of the above said divorce petition from the file of the Sub Court, Madurai to Family Court, Madurai in Tr.C.M.P.(MD).No.246 of 2021, dated 25.06.2021. Now it is seen that the divorce petition is pending in the Family Court and the petition for restitution of conjugal rights is pending before the Sub Court Thirumangalam and DVOP is pending before the Magistrate Court, Thirumangalam. So according to the learned counsel for the first respondent, when two cases are pending before the Thirumangalam Courts transfer of DVOP to Family Court cannot be appropriate.

6.The learned counsel for the petitioner would rely upon the judgment of Bombay High Court in **Santhosh Machindra Mulik Vs. Mohini Mithu Choudhari** reported in **(2020) 1 CivCC 198**, for the purpose of arguments that a petition filed under Sections 12 and 26 of the Domestic Violence Act can be heard by the family Court, before which, matrimonial proceedings are pending. So in that case, the desirability of transferring the DVOP proceedings to family Court has been decided on its own merits and on the ground that conflicting of conclusions can be avoided. But the problem comes in the form of order of Tr.C.M.P.SR.No.15785 of 2021, wherein, it has been decided that such a proceedings cannot be transferred to the family Court. As per this judgment, the criminal consequences ensue under the provisions of prevention of Domestic Violence Act. Therefore, it cannot be transferred to the family Court on that ground, since it is the latest judgment by this Court. So, when valid reason is there, I cannot differ from the view that has been expressed in the judgment. Further the order relied upon by the petitioner in **Crl.O.P.No.29476 of 2017, dated 20.07.2020 in N.Prasad Vs. Harithalakshmi**, has been decided much prior to the decision as mentioned earlier. Moreover, it is a case, which has been decided on the point of limitation.

7.As rightly contended by the respondent by suppressing the pendency of petition filed by the respondent seeking restitution of conjugal rights, an order has been obtained in Tr.C.M.P.(MD).No.246 of 2021. Even in Tr.C.M.P.(MD)No.246 of 2021, a plea has been raised to the fact that DVOP.No.3 of 2021, must be transferred to the family Court, Madurai. But their plea was not entertained on the basis of the objection raised by the respondent. No doubt, that if all the matters are heard by a same Court, conflicting of conclusion can be avoided. But, as I mentioned earlier, latest judgment of this Court comes in the way of ordering this petition. So, in the light of the above development, the DVOP proceedings that has been filed by the respondent has to be independently enquired.



So the petition deserves to be dismissed and accordingly dismissed.
Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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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 Judicial Magistrate, Thirumangalam.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.(MD).No.8478 of 2021
19.08.2021

_RD(31.08.2021) 4P 3C