



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Tr.C.M.P(MD)No.266 of 2019

and

C.M.P(MD)No.6244 of 2019

Mary @ Mari Vijayalakshmi

... Petitioner/Respondent-Wife

-vs-

R.Philip

... Respondent/Petitioner-Husband

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Civil Procedure Code praying this Court to withdraw the case in I.D.O.P. No.69 of 2019 on the file of the Family Court at Chengalpet and transfer the same to the learned District and Sessions Judge, Tuticorin to try along with DOP No.119 of 2019.

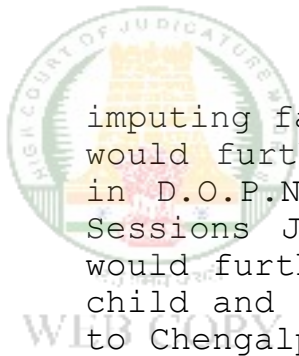
For Petitioner : Mr.S.Deenadhayalan
For Respondent : No appearance

O R D E R

This Transfer Civil Miscellaneous Petition has been filed seeking to withdraw I.D.O.P. No.69 of 2019, on the file of the Family Court, Chengalpet and transfer the same to the file of learned District and Sessions Judge, Tuticorin, to be tried along with D.O.P. No.119 of 2019.

2.Heard the learned counsel appearing for the Petitioner and perused the material documents placed before this Court.

3.The learned counsel for the Petitioner would submit that the marriage between the Petitioner and respondent was solemnized on 17.01.2017 as per Hindu Rights and Customs at Chennai and the marriage reception was celebrated at Tuticorin on 22.01.2017. Subsequent to the marriage the petitioner went to the matrimonial home at Chennai. While the petitioner was in matrimonial home, the respondent has demanded more dowry and tortured her. However, the petitioner adjusted and remained with her husband in the matrimonial home. While being so, she came pregnant and she had delivered a female child on 12.10.2017. Even after the birth of the child, the respondent continued with torture and the petitioner was driven out from the matrimonial home to her parental home and now she is at the mercy of her parents. He would further submit that the Petitioner was in fond hope that the respondent would mend his ways and take her back after some time, but, very shockingly, she received notice from the Court that the respondent had initiated I.D.O.P. No.69 of 2019 on the file of the Family Court, Chengalpet, seeking divorce by



imputing false and untenable allegations against the petitioner. He would further submit that the Petitioner has also filed a Petition in D.O.P.No.119 of 2019, on the file of the learned District and Sessions Judge, Tuticorin, for restitution of conjugal rights. He would further submit that the petitioner is having 1 ½ years female child and that she finds it very difficult to travel from Tuticorin to Chengalpet, which is about 550 kms away and she has no body take care of her at Chengalpet and she has no place to stay at Chengalpet. He would further submit that in similar circumstances, the Hon'ble Apex Court taking into consideration the convenience and the comparative hardship faced by the petitioner/wife had directed to transfer the cases to be tried in Courts near to the petitioner. Thereby, he seeks for transfer.

4.Though notice has been served on the respondent and his name is also printed in the cause list, none appeared on behalf of the respondent.

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 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, I.D.O.P. No.69 of 2019 is withdrawn from the file of Family Court, Chengalpet and transferred to the file of the learned District and Sessions Judge, Tuticorin for disposal as per law. The Family Court, Chengalpet, is directed to transmit the papers to the file of the learned District and Sessions Judge, Tuticorin, forthwith. The learned District and Sessions Judge, Tuticorin, is directed to dispose I.D.O.P. No.69 of 2019 and D.O.P.No.119 of 2019 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 closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1.The Judge,
Family Court,
Chengalpet.

2.The District and Sessions Judge,
Tuticorin.

Tr.C.M.P (MD) No.266 of 2019

and

C.M.P (MD) No.6244 of 2019

25.08.2021

_RS (08.09.2021) 3P 3C