

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2020

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4379 of 2020
and Crl.M.P.Nos.2510 and 2511 of 2020

D.Kathiravan

... Petitioner

Vs

R.Kasthuri

... Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to withdraw the D.V.C.No.44 of 2019 on the file of the XVII Metropolitan Magistrate Court, Saidapet and to transfer the same to the II Additional Family Court, Chennai.

For Petitioner : No Appearance

For Respondent : No Appearance

O R D E R

This petition has been filed to withdraw the D.V.C.No.44 of 2019 on the file of the XVII Metropolitan Magistrate Court, Saidapet and to transfer the same to the II Additional Family Court, Chennai.

2. It is averred in this petition that the petitioner is innocent and he has not committed any offence as alleged by the prosecution. Without any base, the XVII Metropolitan Magistrate Court, Saidapet has taken cognizance in DVC.No.44 of 2019 for the offences under Section 12 read with Sections 18, 19, 20 of Protection of Women from Domestic Violence Act as against the petitioner. Hence he prayed to transfer the same to the II Additional Family Court, Chennai.

3. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

4. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

5. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

6. The only ground raised by the petitioner is that the complaint lodged by the respondent under Domestic Violence Act is barred by limitation for the reason that the respondent was driven out from the matrimonial home in the year 2018 onwards. It is seen from the records, there is no material produced before this Court to show that the respondent was driven out from the matrimonial home in the year 2018. Therefore all the points raised in this petition cannot be considered by this Court and the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

7. In view of the above discussion, this Court is not inclined to transfer the proceedings in D.V.C.No.44 of 2019 on

the file of the XVII Metropolitan Magistrate Court, Saidapet and to transfer the same to the II Additional Family Court, Chennai. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

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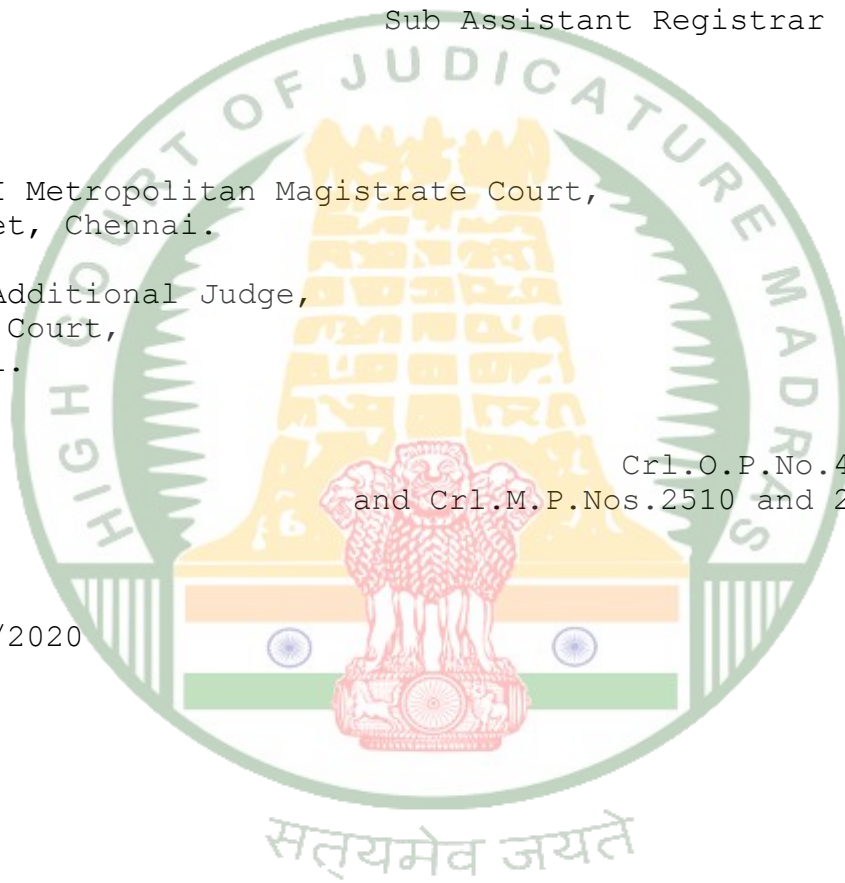
Sub Assistant Registrar

To

- 1.The XVII Metropolitan Magistrate Court,
Saidapet, Chennai.
- 2.The II Additional Judge,
Family Court,
Chennai.

Crl.O.P.No.4379 of 2020
and Crl.M.P.Nos.2510 and 2511 of 2020

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