



CRL.O.P.No.5780 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2022

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.O.P.No.5780 of 2021
and
CRL.M.P.Nos.3718 & 9226 of 2021

S.Chandramouli

... Petitioner

Vs.

P.C.Suganya

... Respondent

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to set aside the order dated 19.02.2021 made in Tr.Crl.M.P.No.3300 of 2020 on the file of the Sessions Court, Chennai.

For Petitioner : Mr.R.Prabakar

For Respondent : Mr.S.Vasu
No Appearance



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ORDER

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This Criminal Original Petition has been preferred challenging the order of the Learned Principal Sessions Judge dated 19.02.2021 made in Tr.Crl.M.P.No.3300 of 2020 in D.V.C.No.154 of 2019.

2. The petitioner is the husband, against whom the wife has filed a petition in D.V.C.No.154 of 2019 on the file of the Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai, under Section 12 of the Domestic Violence Act. The petitioner has filed a Transfer Petition seeking to withdraw the above proceedings in D.V.C.No.154 of 2019 pending on the file of the Metropolitan Magistrate, Additional Mahila Court, Egmore, Chennai and transfer it to the file of the VI Additional Family Court, Chennai, to try along with H.M.O.P.No.4053 of 2019 filed by the petitioner and M.C.No.514 of 2019. The said petition was dismissed. Aggrieved over that, this revision petition has been filed.

3. Heard the learned counsel for the petitioner and perused the materials available on record.



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4. It is submitted by the learned counsel for the petitioner that the HMOP and DVC proceedings are pending before the different courts and hence it is difficult for the petitioner to attend both the Courts; if the hearings of both cases are conducted in one and the same Court that will avoid conflict of judgments.

5. On perusal of the records, it is seen that the respondent has filed a complaint under Section 12 of the DVC Act. It has been taken on file in DVC.No.154 of 2019 and the same is pending on the file of the Additional Mahila Court, Chennai.

6. The proceedings under Domestic Violence Act cannot be transferred from a Magistrate Court to a Civil or Family Court at the instance of the petitioner who is the husband. However, if the wife has filed a petition for transfer and with her consent the proceedings can be transferred from the Magistrate Court to another Court. Sec.2(q) of the Protection of Women from Domestic Violence Act, 2005 would read as under:

“Section 2(q) in The Protection of Women from Domestic Violence Act, 2005



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(q) ?"respondent"? means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."

7. The proceedings under Domestic Violence Act initiated by the aggrieved wife can be transferred to the Family Court only at the instance of the victim or with her consent. In the case on hand, the transfer application has been filed by the husband. Since the family court while dealing with the cases under Domestic Violence Act, cannot invoke the power of the Magistrate. So, the complaint cannot be deprived to avail the benefit of conducting the domestic violence proceedings before the Magistrate. However it is open to the victim to waive her above right and seek to transfer the said proceedings to be conducted along with any other proceedings pending in the Family Court. Since the request for transfer was originated by the husband against whom the complaint was given in the domestic violence case, the prayer for transfer the petition cannot be considered.



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8. In this regard, it is relevant to rely upon the order dated 12.07.2022 passed by the Hon'ble Division Bench of this Court, in the case of **P.Ganesan vs. Revathy Prema Rubarani**, in **C.R.P.PD(MD) No.909 of 2021 & etc., batch cases**, wherein it is held as follows:

“17. To sum up, our answer to the Questions referred are as follows:

(a) The proceedings under chapter IV of the Domestic Violence Act are civil in nature.

(b) This Court can exercise power under section 482 Cr.P.C in respect of Domestic Violence Act proceedings.

(c) Section 468 Cr.P.C is not applicable for proceedings under Domestic Violence Act.

(d) We cannot by a Judicial exercise determine the period of limitation in the absence of any provision under the Act prescribing limitation.

(e) Proceedings under Domestic Violence Act cannot be transferred from a Magistrate to a Civil or Family Court at the instance of the Respondent defined under 2 (q) of the



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Domestic Violence Act. However, the proceedings can be transferred at the instance of the applicants / victim or with her consent.

9. In view of the above, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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Index : yes/no

Internet : yes/no

To

The Principal District and Sessions Court, Chennai.



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R.N.MANJULA. J.

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