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CRL.O.P.No.9080 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2022

CORAM:

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

CrI.O.P.No.9080 of 2021

and

CrI.MP.No.5885 of 2021

P.Yoganathan

.. Petitioner

Versus

1.Kanimozhi

2.M.Palaniappan

3.Meenachi

...Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 21.01.2021 passed in Tr.CMP.No.2729 of 2020 on the file of the Principal Sessions Judge, Salem.

For Petitioner : Mr.A.Prithviraj for
Mr.R.Nalliyappan

For Respondent-1 : Mr.K.R.Samrait

For RR2 and 3 : 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, Salem, dated 21.01.2021 made in Tr.C.M.P.No.2729 of 2020 in D.V.C.No.71 of 2018.

2. The petitioner is the husband, against whom, his wife, who is the 1st respondent herein, has filed a petition in D.V.O.P.No.71 of 2018 on the file of the Additional Mahila Court, Salem, under Section 12 r/w section 18, 19, 20 and 22 of the Protection of Women From Domestic Violence Act 2005. The petitioner herein filed a suit in OS.No.15 of 2019 on the file of the learned District Munsif Court at Thiruchengode and HMOP No.115 of 2019 on the file of the learned Sub Judge, Thiruchengode for dissolution of marriage. The 1st respondent has filed two transfer applications in Tr.CMP.Nos.700 and 701 of 2019 before this Court to withdraw the said HMOP.No.115 of 2019 from the file of the learned Sub Judge, Thiruchengode and OS.No.15 of 2019 from the file of the learned District Munsif Court at Thiruchengode and to transfer the same to the Sub Court, Salem and the same has been allowed by virtue of the order dated



13.12.2019. In the said order, it is observed that the first respondent is the wife and who is the petitioner in those petitions, has to take steps to transfer the case pending in DVOP.NO.71/2018 from the file of the learned Additional Mahila Court, Salem to Sub Court, Salem. Since the wife has failed to take steps to transfer the DVOP.NO.71/2018 to the Sub Court, Salem, the husband who is the petitioner herein has filed a petition before the Principal Sessions Judge, Salem in Tr.Crl.MP.No.2729/2020 to transfer the DVOP.No.71/2018 from the Additional Mahila Court, Salem to Sub Court, Salem, but the same was dismissed. Aggrieved over that this Criminal Original Petition has been preferred.

3. It is also pertinent to note that the petitioner also filed Crl.OP.No.2388 of 2020 to quash D.V.O.P.No.71/2018 and this Court by its order dated 22.07.2020, however quashed the proceedings only as against the respondents 2 and 3 therein and in the said order a direction is also given to the petitioner to deposit a sum of Rs.5,000/- for every month to the credit of the above D.V.O.P.No.71/2018 as ad-interim maintenance. The petitioner is said to have complied the said direction regularly.



4. Heard the submission made by either side learned counsel and perused the materials available on record.

5. It is submitted by the learned counsel for the petitioner that the HMOP.No.115 of 2019, OS.No.15 of 2019 and DVOP.No.78/2018 all 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.

6. On perusal of the records, it is seen that the first respondent has filed a complaint under Section 12 r/w section 18, 19, 20 and 22 of the Protection of Women From Domestic Violence Act 2005. It has been taken on file in DVC.No.71 of 2018 and the same is pending on the file of the Additional Mahila Court, Salem.

7. The proceedings under Domestic Violence Act cannot be transferred from a Court having magisterial power 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



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under:

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

(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.”

8. 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. 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 has been made 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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9. 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 Domestic Violence Act. However, the proceedings can be transferred at the instance of the applicants / victim or with her consent.”

10. Even though the proceedings have been pending before the



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different Courts, the fact remains that both the courts situated in Salem Combined Court Complex. So it is up to the petitioner to make request before appropriate Court to post both the matter on the same day when the other case gets posted to.

In view of the above, this Criminal Original Petition stands **dismissed** and the order dated 21.01.2021 passed in Tr.CMP.No.2729 of 2020 on the file of the Principal Sessions Judge, Salem is confirmed. Consequently, connected miscellaneous petition is dismissed.

23.11.2022

Index: Yes/No
jrs

To:

The Principal Sessions Judge, Salem.



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R.N.MANJULA, J.,

jrs

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