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Crl.O.P.No.24542 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2022

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.24542 of 2021

and

Crl.MP.No.13533 of 2021

P.Tennyson

...Petitioner

Vs.

N.Hephziba

... Respondent

PRAYER: Criminal original Petition filed under Section 482 of Cr.P.C. praying to withdraw the petition in DVC No.12 of 2021 on the file of the Additional Mahila Court, Tiruchirappalli and to transfer the same to the Principal District Judge, Vellore.

For Petitioner : Mr.P.Kannan

For Respondent : Mr.R.Bhagawat Krishnan

ORDER

This Criminal Original Petition has been filed to withdraw the petition in DVC No.12 of 2021 on the file of the Additional Mahila Court, Tiruchirappalli and to transfer the same to the Principal District Judge, Vellore.



2. The petitioner is the husband, against whom the wife has filed a petition in DVC.No.12 of 2021 on the file of the on the file of the Additional Mahila Court, Tiruchirappalli. The petitioner has filed a divorce petition against the respondent in IDOP No.116 of 2020 on the file of the Principal District Judge, Vellore.

3. It is submitted that since both the matters 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.

4. The proceedings under Domestic Violence Act cannot be transferred from a Magistrate Court to a Civil or Family Court at the instance of 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

(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.”

5. 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.



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6. In view of the above, the Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes / No
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To

The Additional Mahila Court, Tiruchirappalli.



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R.N.MANJULA, J.,

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