



**Crl.O.P No.21852 of 2021**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

**CORAM :**

**THE HONOURABLE Ms. JUSTICE R.N.MANJULA**

**Crl.O.P No.21852 of 2021**

**and**

**Crl.M.P No.11867 of 2021**

1.Aravind  
2.S.Revathi  
3.J.Bhavani  
4.Jayagopi

... Petitioners

Vs

H.Divya

... Respondent

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order passed by the Chief Judicial Magistrate Court, Tiruvallur in Transfer CMP No.1448 of 2021 dated 28.10.2021, consequently transfer the DVC No.7 of 2020 on the file of the Judicial Magistrate, Tiruvottiyur to Judicial Magistrate Court-II, Poonamallee.

For Petitioners : Mr.G.M.Syed Fasi Mohammed

For Respondent : Mr.D.Nagasaila



Crl.O.P No.21852 of 2021

## **ORDER**

The Criminal Original Petition has been filed, to set aside the order of the learned Chief Judicial Magistrate, Thiruvallur dated 28.10.2021 made in Transfer CMP No.1448 of 2021 and consequently transfer the DVC No.7 of 2020 on the file of the Judicial Magistrate, Tiruvottiyur to Judicial Magistrate Court-II, Poonamallee.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

3. The 1st petitioner is the husband of the respondent; the 2nd petitioner is the sister of the 1st petitioner and the petitioners 3 and 4 are parents of the 1st petitioner; the respondent has initiated proceedings against the petitioners for domestic violence before the Judicial Magistrate, Tiruvottiyur in DVC No.7 of 2020; the petitioners have filed Transfer CMP No.1448 of 2021 to transfer the same from Judicial Magistrate, Tiruvottiyur to Judicial Magistrate, Poonamallee; the said petition was dismissed on 28.10.2021; aggrieved over that, this petition has been preferred.



**Crl.O.P No.21852 of 2021**

4. The learned counsel for the petitioners submitted that the learned Chief Judicial Magistrate had chosen to dismiss the petition on the observation that the respondent is working as a junior advocate under one Balaji and practising at Tiruvottiyur; the job of an advocate cannot be considered as an employment; the respondent is residing at Tiruverkadu as seen in the cause title and hence the transfer petition ought to have been allowed; the petitioners 3 and 4, who are the parents of the 1st petitioner are aged persons and they are suffering with certain ailments and it is not possible for them to go and attend the proceedings at Tiruvottiyur.

5. The learned counsel for the respondent submitted that the learned trial Judge had rightly dismissed the petition in view of Section 27 of the Protection of Women from Domestic Violence Act, 2005 and hence, the order of the learned trial Judge does not require any interference.

6. The fact that the respondent is a junior advocate of one Mr. Balaji and she is practising at Tiruvottiyur courts is not denied. According to the learned counsel for the petitioners, the respondent is a practising



Crl.O.P No.21852 of 2021

advocate and it cannot be considered as an employment; hence the respondent cannot take advantage of the practice at Tiruvottiyur and file the DVC proceedings before the Judicial Magistrate, Tiruvottiyur. The jurisdiction as contemplated under Section 27 of the Protection of Women from Domestic Violence Act, 2005 read as under:

*27.Jurisdiction (1) The Court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which -*

*(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or*

*(b) the respondent resides or carries on business or is employed; or*

*(c) the cause of action has arisen:  
shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act.*

*(2) Any order made under this Act shall be enforceable throughout India.*

*This clause lays down that the Magistrate, within the local limits of whose jurisdiction the aggrieved person permanently or temporarily resides or carries on*



*business or is employed or the respondent resides or carries on business or is employed or the cause of action has arisen, shall be the competent Magistrate to grant protection orders and other orders and to try offences under the proposed legislation. Sub-clause (2) provides that any order made under the proposed legislation shall be enforceable throughout India.*

7. The respondent is the complainant who has alleged that she was subjected to domestic violence. According to Section 2 (a) of the Act, the aggrieved person is defined as under:

*(2) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent".*

8. The marriage between the 1st petitioner and the respondent is not denied. Since the respondent had domestic relationship with the petitioners in her capacity as the wife of the 1st petitioner, she will come under the definition of the aggrieved person. So far as Section 27 of the Act is concerned, the first priority is given to the place where the aggrieved person have permanently or temporarily resides or carries on



**Crl.O.P No.21852 of 2021**

business or is employed. So far as the respondent is concerned, she is an advocate practicing in the Courts of Tiruvottiyur. Even if advocacy cannot be called as employment under some one, it is a profession and it is a kind of self-employment. The respondent had chosen to practice at Courts of Tiruvottiyur and hence the place where she works falls under the jurisdiction of the Judicial Magistrate, Tiruvottiyur. Even without any profession, if the respondent choses to reside in any place, either permanently or temporarily, then also she has the liberty to initiate proceedings under Domestic Violence Act in the Judicial Magistrate Court which has the jurisdiction over the place where she had chosen to reside. So, the option for the respondent is twofold to follow either by virtue of her residence or by virtue of her occupation. Since the respondent is practicing as an Advocate in the Courts of Tiruvottiyur, she has a right to maintain the proceedings before the Judicial Magistrate, Tiruvottiyur and the said Magistrate has got jurisdiction to entertain the petition filed by the respondent, in view of the provisions under Sections 2(a)(i) and Section 27 of the Protection of Women from Domestic Violence Act, 2005.

**9. The learned Chief Judicial Magistrate, Tiruvallur has rightly**



**Crl.O.P No.21852 of 2021**

applied the law rightly to the facts stated before him and rightly held that the Judicial Magistrate, Tiruvottiyur has got the jurisdiction to entertain the respondent's petition for initiating domestic violence proceedings against the petitioners herein. The learned Chief Judicial Magistrate, Tiruvallur has also observed that the petitioners 3 & 4 are at liberty to apply to the jurisdictional Magistrate himself to dispense the personal appearance whenever they find it inconvenient except for certain important hearings. In view of the above stated reasons, I do not find any reason to interfere with the order of the learned Chief Judicial Magistrate, Tiruvallur made in Transfer CMP No.1448 of 2021 dated 28.10.2021.

**10.** In the result, this Criminal Original Petition is dismissed and the order of the learned Chief Judicial Magistrate, Tiruvallur made in Transfer CMP No.1448 of 2021 dated 28.10.2021 is confirmed. Consequently, connected Miscellaneous Petition is closed.

**16.11.2022**

Index : Yes/ No  
Speaking Order: Yes/No  
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**Crl.O.P No.21852 of 2021**

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To

The Chief Judicial Magistrate Court,  
Tiruvallur



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**Crl.O.P No.21852 of 2021**

**R.MANJULA, J**

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**Crl.O.P.No.21852 of 2021**  
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**Crl.M.P No.11867 of 2021**

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