

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.06.2022
CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.22913 of 2021 and
Crl.M.P.12514 of 2021

Rajaganesh

... Petitioner

Vs.

1.N.Mullai

2.Minor Dharshan,

Represented by his mother/natural guardian
N.Mullai

... Respondents

Prayer: This Criminal Original Petition had been filed under Section 407 of Criminal Procedure Code to withdraw the Petition filed by the respondent in M.C.No.11 of 2020 on the file of Judicial Magistrate No.I, Tambaram and transfer the same to Family Court at Villupuram.

For Petitioner
For Respondents

: Mr.R.Nalliyappan
: No Appearance

ORDER

This Criminal Original Petition had been filed to transfer the Petition filed by the respondent in M.C.No.11 of 2020 on the file of the learned Judicial Magistrate No.I, Tambaram to the Family Court at Villupuram.

2. It is the contention of the Petitioner that the Petitioner had filed a Petition in FCOP No.289 of 2018 before the Family Court, Salem. When the Petitioner is employed at Salem, the first Respondent/wife is residing within the limits of learned Judicial Magistrate, Tambaram. The first Respondent/wife had filed Trcmp No.486 of 2018 in which the Petitioner herein and Respondent objected to transfer the case from Salem to Chennai. When that be the case, in the course of arguments both side Counsels suggested that instead of transferring the case from Salem to Chennai, the case may be transferred to a District midway between Salem and Chennai. Accordingly, the learned Single Judge had passed orders by transferring the FCOP No.289 of 2018 pending on the file of the learned Judge, Family Court, Salem to the learned Judge, Family

Court, Villupuram by an order dated 24.09.2018 in Trcmp.No.486 of 2018.

3. On the strength of that order the Petitioner/husband had filed this Petition seeking to transfer the Maintenance Case filed by the Respondents seeking maintenance from the Petitioner herein. It is the contention of the Petitioner that when the Petitioner seeking divorce in FCOP No.289 of 2018 it was transferred to the file of the learned Judge, Family Court, Villupuram, which is pending. She can very well agitate the same for the maintenance in the same Court. It is the guideline issued by the Hon'ble Supreme Court in the case of this nature. The Courts concerned had to consider the difficulties and inconvenience caused to the women and jurisdiction nearer to her residence has to be considered while entertaining the Petitions involving women as litigant, particularly in maintenance cases and family dispute cases. Ignoring those guidelines the Petitioner/husband herein had filed this Petition. It is nothing but only to cause harassment to the first Respondent/wife who is residing within the jurisdiction of the learned Judicial Magistrate, Tambaram. In spite of the notice sent in this Petition, the first Respondent/wife had not disputed or agitated the claim of the Petitioner herein.

4. Considering the place where the first Respondent/wife and the minor son are residing, she had filed a Petition in M.C.No.11 of 2020 seeking maintenance from the husband on the file of learned Judicial Magistrate, Tambaram which is nearer to her place of residence. If this Petition is allowed, it amounts to violation of the guidelines issued by the Hon'ble Supreme Court and the first Respondent/wife has to travel to the learned Judicial Magistrate, Villupuram for every hearing as she is the Petitioner in the Maintenance Case, where she does not have any relatives or acquaintance.

5. In the light of the guidelines of the Hon'ble Supreme Court of India, the claim of the Petitioner is found not acceptable and only on the issue of ego he had filed this Petition, which is not convenient to both the parties. Therefore, this Petition is dismissed and as the identity of the Respondent in Maintenance Case is not disputed, he can very well engage Counsel and appear through his Counsel. He can also file appropriate Petition seeking exemption from personal appearance unless warranted to proceed with the evidence during Trial. Till such time his presence before the learned Judicial Magistrate, Tambaram is not at all required.

6. On the strength of the Petition in Trcmp.No.486 of 2018 filed by the first Respondent/wife had been allowed, that to on the suggestion of Counsels on both sides that it may be

considered midway, it has been transferred from Salem to Villupuram which is not nearer to the place of residence of the first Respondent/wife, that is also far away. This Court cannot now alter/amend the said order. This Court can only consider the difficulties and inconvenience faced by the first Respondent/wife who is seeking maintenance without any monitoring help, she had forced to transfer up the case to Villupuram to agitate her right. In the absence of the Petitioner/husband there is other alternative remedy to him to appear before the Court. Therefore, this transfer Petition is found to be against the guidelines issued by the Hon'ble Supreme Court in the case of "State of Haryana Vs. Bhajan Lal" while exercising the extraordinary powers. This Petition is dismissed as mischievous. The learned Judicial Magistrate, Tambaram is directed to proceed with the trial of the Maintenance Case and dispose of the same within a period of the three months from the date of receipt of a copy of this order or from the date of uploading the order on the website of this Court. If the Petitioner herein has filed any Petition seeking exemption from his personal appearance, the learned Judicial Magistrate, Tambaram may consider the Petition and pass appropriate orders.

7. With the above direction this Criminal Original Petition is dismissed. Consequently Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To,

1.The Judicial Magistrate No.I, Tambaram,Chennai.

2.The Judge,

Family Court, Villupuram

+1 cc to Mr.B.Sivasubramanian, Advocate Sr.NO.40152

+1 cc to Mr.R.Nalliyappan, Advocate Sr.NO. 39287

CrI.O.P.No.22913 of 2021

CrI.M.P.No.12514 of 2021

skm(CO)

A.SK(14/07/2022)