



CrI.O.P.No.22330 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.22330 of 2022
and CrI.M.P.No.14373 of 2022

Dr.S.Uma Maheshwari @
S.R.Aphurvika

... Petitioner

Vs.

Dr.A.Senthil Kumar

... Respondent

Prayer : Criminal Original Petition has been filed under Section 407 r/w. 482 of Criminal Procedure Code to withdraw the case in M.C.No.471 of 2016 on the file of VII Additional Family Court, Chennai may be transferred to the Family Court, Salem.

For Petitioner : Ms.V.Ambika

For Respondent : Mr.M.Murugesan



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ORDER

The petitioner filed this petition to transfer the maintenance case in M.C.No.471 of 2016 from the file of VII Additional Family Court, Chennai to the file of the Family Court at Salem.

2.The petitioner got married to the respondent on 23.05.2010 at Salem, it was a love-cum-arranged marriage, after marriage they were living happily for some time and out of the wedlock, a girl child Akshitha was born on 26.02.2011. Thereafter, the parents of the respondent demanded dowry in cash as well as gold of 100 sovereigns. The petitioner's parents were able to meet out part of it and demand for dowry continued. The respondent thereafter treated the petitioner with cruelty, further the respondent developed relationship and friendship with many women. The respondent is a Doctor by profession working in Government Peripheral Hospital, Perambur, Chennai. The petitioner with a fond hope that the respondent would turn around, she continued to stay with her husband but the respondent's attitude never changed. Further, the respondent with a false



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allegation of adultery and cruelty filed divorce petition in O.P.No.3444 of 2016 before the III Additional Family Court, Chennai.

The petitioner filed a petition for restitution of conjugal rights in O.P.No.4028 of 2016 before the III Additional Family Court, Chennai. The divorce petition filed by the respondent in O.P.No.3444 of 2016 later came to be dismissed for non-prosecution on 17.03.2021. The petitioner withdrew the petition filed for restitution of conjugal rights in O.P.No.4028 of 2016 since the harassment against the petitioner and her daughter continued and the respondent neglected to maintain the petitioner who is not employed, she filed a maintenance case in M.C.No.471 of 2016 before the VII Additional Family Court, Chennai. In the meanwhile, unable to bear the harassment and cruelty, the petitioner left the matrimonial home and is residing with her parents in Salem. The respondent's attitude never changed and he had neglected to maintain the petitioner and his daughter.

3.To circumvent the situation as though he is not at fault, the respondent filed H.M.O.P.No.4646 of 2021 on the file of the VII Additional Family Court, Chennai for restitution of conjugal rights. The petitioner's



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daughter who is now aged about 11 years studying in Class VI in Sri Chaitanya School at Salem. The petitioner's father passed away and the petitioner is now being supported by her mother, who is also suffering with age related ailments. The respondent even failed to provide medical expenses to the petitioner's daughter. After receipt of the summons from the Family Court in H.M.O.P.No.4646 of 2021, the petitioner filed Tr.C.M.P.No.872 of 2022 before this Court and this Court by order dated 09.12.2022 transferred H.M.O.P.No.4646 of 2021 from the file of the VII Additional Family Court, Chennai to the file of the Family Court at Salem. The petitioner is residing in Salem with her mother is not in dispute and the same is recorded in H.M.O.P.No.4646 of 2021. The petitioner was neglected by the respondent, she was forced to move out of the matrimonial home and no maintenance was paid by the respondent though the respondent is a Doctor employed in Government Hospital. The petitioner is facing great difficulty due to the negligence of the respondent to sustain herself and she is unable to take long distance journey in prosecuting the maintenance case initially filed at Chennai when she was residing in Chennai. Further, to safeguard the interest and rights of the women who are



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subjected to harassment and cruelty, this Court have been consistent in transferring the case to the place of residence and convenience of the neglected wives. In view of the above, the petitioner seeks transfer of maintenance case in M.C.No.71 of 2016 from the file of the VII Family Court, Chennai to the file of the Family Court at Salem.

4.Heard Ms.V.Ambika, learned counsel appearing on behalf of the petitioner.

5.Learned counsel for the respondent submitted that the respondent had been taking care of his wife and daughter except for the past three months. Even during an occasion when his daughter was admitted in the hospital for treatment, the respondent paid the medical expenses. Further, the respondent is also paying school fees regularly to his daughter directly to the School authorities. Suppressing all these facts, the petitioner filed the maintenance case as though the respondent had neglected her. It is the respondent who is suffering at the hands of the petitioner for her conduct, behaviour and cruelty. The respondent is willing to live with the petitioner



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and his daughter, even he had obtained visitation rights and visiting his daughter. It is the petitioner who is creating obstacles and not allowing the respondent to have his visitation rights. He would submit that the respondent's intention to live with the petitioner and his daughter is further fortified by the fact that he had filed H.M.O.P.No.4646 of 2021 seeking restitution of conjugal rights and it is the petitioner's attitude and adamancy in not joining the matrimonial home and on her own volition the petitioner left the matrimonial home and she is not entitled for any maintenance. He further submits that Tr.C.M.P.No.872 of 2022 has been filed and without hearing the respondent, transfer has been ordered. He would submit that it is the petitioner who filed maintenance case invoking the jurisdiction of Madras and taking advantage of the order in Tr.C.M.P. in the other case, the petitioner has now filed a petition for transferring the maintenance case from Chennai to Salem and it is only for the purpose of harassment and to wreck vengeance. Hence, he opposes this petition.

6.Considering the submissions made and on perusal of the materials, it is not in dispute that marriage between the petitioner and the respondent



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took place at Salem, after the marriage both the petitioner and the respondent were residing at Chennai and during that time matrimonial discord arose between them. Earlier cases were filed before the Family Court, Chennai and later the same was withdrawn and maintenance case was filed by the petitioner in Chennai in the year 2016. Thereafter, the petitioner is living with her parents at Salem is not in dispute and her minor daughter Akshitha is living with the petitioner in Salem and she is studying in Sri Chaitanya School at Salem is also not in dispute. Now the petitioner is living in Salem is also not in dispute. Whether it is voluntary or without any sufficient reason is a matter of fact to be decided in the maintenance case. As on date, the petitioner is residing in Salem is not in dispute. Further, the Apex Court as well as this Court had consistently held that it is the residence of the wife which determines the question of jurisdiction. In this case, the petitioner/estranged wife of the respondent is residing in Salem and the nearest jurisdictional Court to redress the grievance of the petitioner would be the Court at Salem, otherwise the petitioner would face great difficulty and hardship. Further, this Court in Tr.C.M.P.No.872 of 2022 transferred H.M.O.P.No.4646 of 2021 filed by the respondent from the file



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of the VII Additional Family Court, Chennai to the file of the Family Court at Chennai. In view of the same, it would be appropriate that this maintenance case to be transferred and tried in the Family Court, Salem.

7. Accordingly, the maintenance case in M.C.No.471 of 2016 pending on the file of the VII Additional Family Court, Chennai is transferred to the file of the Family Court at Salem. The Criminal Original Petition is disposed of with the above directions. Consequently, connected M.P. is closed.

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Index : Yes/No
Speaking Order/Non-Speaking Order
cse

To

1. The VII Additional Judge,
Family Court, Chennai.

2. The Family Court,
Salem.



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M.NIRMAL KUMAR, J.

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