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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.07.2024
Pronounced on : 06.12.2024

CORAM:

THE HON-BLE MR.JUSTICE M.NIRMAL KUMAR

Tr.C.M.P.Nos.460 of 2024
and
CMP No.9376 of 2024

N.Rajkumar

... Petitioner

Vs.

R.Antony Fathima @ Leona

... Respondent

PRAYER: Transfer Civil Miscellaneous Petition filed under Section 24 of the Code of Civil Procedure, praying to withdraw DVC.No.13 of 2021 on the file of XXII Metropolitan Magistrate Saidapet, Chennai and to transfer the same to the file of VI Additional Family, Court at Chennai.

For Petitioner : Ms.B.V.Diveyadharshini
For M/s.Namasivayam

For Respondent : Mr.S.T. Raja

COMMON ORDER

The Transfer Civil Miscellaneous Petition has been filed by the petitioner/husband, seeking transfer of the Domestic Violence Complaint in D.V.C.No.13 of 2021, filed by the respondent/wife from the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, to the file of the VI Additional Family Court at Chennai.



2. Ms.B.V.Diveyadharshini, the learned counsel for the petitioner submitted that the respondent on her own left the matrimonial home and now claims residence order and maintenance, which she is not entitled. She further submitted that there are other proceedings filed by the respondent in I.D.O.P.No.2571 of 2016, pending on the file of the VI Additional Family Court at Chennai, on the ground of cruelty and maintenance case in M.C.No.407 of 2017 also pending on the file of the VI Additional Family Court at Chennai. As per Section 7(2) of The Family Courts Act, 1984, the Family Judge to act as a Magistrate, which is not in dispute, for that reason only, the maintenance cases are filed before the Family Court. As per Section 7(2)(b) of the Family Court Act, it is further clarified that the Family Court can exercise the power of Magistrate or any other enactment. The Domestic Violence Act would fall under any other enactment. Hence, it would be appropriate that the domestic violence complaint filed by the petitioner be tagged along with other cases pending on the file of the VI Additional Family Court at Chennai.

3. To lend support of her submissions, the learned counsel for the petitioner placed a strong reliance on the Judgment of the Hon'ble Supreme Court in the case in ***Shakti Bhog Food Industries Ltd., Vs. The Central Bank of India and Ors*** reported in (***AIR 2020 SC 2721***) wherein in paragraph No.6, it has been held as follows:-

“6. The central question is: whether the
plaint as filed by the Appellant could have been



rejected by invoking Order VII Rule 11(d) of the Code of Civil Procedure? Indeed, Order VII Rule 11 of the Code of Civil Procedure gives ample power to the Court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation. This position is no more *res integra*...”

4. Further, the learned counsel relied on the decision of the Bombay High Court in the case of **Anirudh Ajaykumar Garg Vs. The State of Maharashtra** (MANU/MH/4253/2021) wherein it has been held that “the power of Superintendence under Article 227 of the Constitution of India, this Court exercise supervisory jurisdiction both judicial as well as administrative over the Courts and Tribunals subordinate to this Court.

5. Mr.S.T. Raja, the learned counsel appearing for the respondent strongly objected the submission of the petitioner stating that the respondent was chased out from the matrimonial home and she has got no place to go, for that reason, she asked for residence order and maintenance. The learned counsel further submitted that the D.V. Act has been enacted to provide a remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The DV Act has been enacted also to provide an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any



kind occurring within the family. As per Section 29 of The Protection of Women from Domestic Violence Act, 2005, there is a specific provision that any person aggrieved on the order passed by the Magistrate, can file an appeal within thirty days before the Court of Session. Hence, if the domestic violence case transfers to the file of the Family Court, the aggrieved person would lose the benefit of appeal. The learned counsel, in support of his contentions, relied on a decision of this Court in ***P.Arun Prakash and Others Vs. S.Sudhamary*** reported in (2021) 2 L.W 518, wherein in paragraph 55, it has been held as follows:-

“55. The Domestic Violence Act, Family Courts Act, Law for Maintenance, Custody of Children etc., are enacted for the welfare and to protect the interest of the women in our great Nation. The Special enactments provide varieties of reliefs, enabling the aggrieved women to redress their grievances by following the procedures as contemplated. These Special Enactments are self-regulated and the jurisdiction of the Courts constituted and the powers and the procedures are also enumerated. While so, there is no reason whatsoever to deviate from the provisions of such special enactments for the purpose of invoking Article 227 of the Constitution of India. In other words, the proceedings under those special enactments are to be regulated in accordance with the provisions of such Acts and not otherwise. The scope of the power of superintendence of Subordinate Courts by the High Court under Article 227 of the



Constitution are entirely distinct and different and the same cannot be exercised for the purpose of transfer of cases from Criminal Court to the Family Court or the Civil Court.”

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. The brief facts leading to filing of I.D.O.P.No.2571 of 2016, before the learned VI Additional Family Court at Chennai, for dissolving the marriage held on 27.11.2014 with the respondent on the ground of cruelty. The respondent filed a petition for restitution of marriage, subject matter of the Present Transfer Civil Miscellaneous Petition, are that the marriage between the petitioner and the respondent was love cum arranged marriage, conducted as per customs practiced under Christian rites and customs at Advent Christian Church, Thiruvanmiyur, Chennai. Through the wedlock, they blessed with a male child in June 2016. It would appear that there arose difference of opinion between the husband and wife. As a result of which, divorce and maintenance proceedings are pending before the Family Court at Chennai. Now, the counsel for the petitioner seeks transfer of domestic violence proceeding to be heard and disposed of along with the divorce and maintenance proceedings.

8. On earlier occasion, when the matter came up for hearing, I
<https://www.mhc.tn.gov.in/judis>
entertained a doubt as to whether the Family Courts have jurisdiction



to deal with the Domestic Violence Complaint. This is because the domestic violence proceeding is initiated before a Magistrate. Insofar as Section 125 of Cr.P.C., is concerned, by virtue of Section 7(2)(a) of the Family Courts Act, the Family Courts have been vested with the jurisdiction to exercise Chapter IX of Cr.P.C.

9. As regards the relief available under Sections 18, 19, 20, 21 and 22 of the D.V.Act can be sought in any legal proceeding before a Civil Court, Family Court, or a Criminal Court affecting the aggrieved person, this relief is in addition to the other relief sought by the aggrieved person in other proceedings and in case of any relief obtained by the aggrieved person in the corollary proceedings, the same to be considered while deciding the relief sought in the pending proceedings. In view of the authoritative pronouncement of the Full Bench Judgment of this Court in Arul Daniel Vs. Suganya reported in (2022) SCC Online Madras High Court 35, this Court is not inclined to entertain this Transfer Civil Miscellaneous Petition and the same is liable to be dismissed.

10. In the result, this Transfer Civil Miscellaneous Petition stands dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

06.12.2024

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes

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To

- 1.The XXII Metropolitan Magistrate Court,
Saidapet,
Chennai
2. VI Additional Family, Court
Chennai.



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M.NIRMAL KUMAR, J.

vv2

**Pre-Delivery Orders made in
Tr.C.M.P.Nos.460 of 2024**

06.12.2024