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CrI.O.P.No.16221 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.16221 of 2024
& CrI.M.P.No.9895 of 2024

Mrs.N.S.Swathee

... Petitioner

/versus/

Mr.Yogesh Kumar.

... Respondent

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to direct the trial Court to number the unnumbered petition filed in S.R.No.411 of 2024 in M.C.No.14 of 2023 on the file of Family Court, Namakkal, filed on 26.06.2024 and returned on 27.06.2024 and dispose the said petition on merits.

For Petitioner : Mr.U.Venkatesh.

ORDER

The petitioner herein is wife of the respondent. Due to misunderstanding between the spouse, the respondent has initiated divorce proceedings in H.M.O.P.No.161 of 2020 on the file of II Additional Subordinate Court, Coimbatore. Whereas, the petitioner/wife had preferred Maintenance Case under Section 125 of Cr.P.C before the Judicial Magistrate, Sulur. The petitioner stated that the divorce petition and the maintenance case are pending



in two different Court, causes inconvenience and she being employed sought for transfer of H.M.O.P as well as the Maintenance Case to Namakkal Family Court and that was allowed by this Court on 09.12.2022 in Tr.C.M.P.No.877 of 2022. After the case been transferred to Family Court, Namakkal, the petitioner herein has filed an application under Section 205 of Cr.P.C seeking exemption from physical appearance. The Family Court, Namakkal has returned the application stating that under the Family Courts Act, the parties have to be present in person and their personal appearance cannot be dispensed with under Section 205 of Cr.P.C.

2. Challenging the said docket order, the present Criminal Original Petition is filed.

3. The Learned Counsel appearing for the petitioner submitted that after the order passed in Transfer petition, the petitioner herein been gainfully employed in Kerala and presently she is at Kerala along with her aged mother and therefore, she is not in a position to attend the Court at Namakkal on every hearings, hence sought for exemption. However, the Family Court, Namakkal had returned the application stating that under the Family Courts Act, personal appearance of the petitioner is required. Further, the Learned Counsel prayed



that due to the reasons stated in the petition, the physical appearance of the petitioner on the hearing dates need to be exempted and the docket order of the Family Court to be set aside.

4. The Family Courts Act, 1984, The Central Act passed by the Parliament and pursuant to the said Act, Special Court been constituted in every District to deal Matrimonial disputes arising out of notified Taluks.

5. In this case, the petitioner and the respondent got married on 22.02.2023 at Namakkal. After a brief period of joint living, they got separated leading to filing of petition for Restitution of Conjugal Rights by the respondent before the Subordinate Court, Namakkal in H.M.O.P.No.218 of 2016. The said petition was transferred to Family Court, Coimbatore assigned new H.M.O.P.No.448 of 2019 and thereafter, the respondent has filed another petition for divorce in H.M.O.P.No.161 of 2020 on the file of Additional Subordinate Court, Coimbatore. Meanwhile, this petitioner has filed Maintenance Case No.3 of 2022 before the Judicial Magistrate, Sulur.

6. At the instance of the petitioner herein, H.M.O.P.No.161 of



2022 on the file of Additional Subordinate Court, Coimbatore and M.C.No.14 of 2023 and M.C.No.3 of 2020 were transferred to Family Court, Namakkal.

After transfer, now the petitioner herein sought for exemption from personal appearance. As pointed out earlier, the Special Court constituted in Family Court Act mandates appearance of the parties and right to have assistance of legal representatives can be only on the leave granted by the Court under Section 13 of the said Act. It is discretion of the Judge to permit or not to permit representation by Lawyer on behalf of the parties.

7. This petitioner having voluntarily sought for transfer of trial from Coimbatore to Namakkal Court has taken out an application under Section 205 of Cr.P.C which is meant for exemption of physical appearance by the accused. Whereas, in this case, the petitioner is not an accused. The Family Court has rightly declined to entertain this application. If at all the petitioner has any inconvenience to attend the Court on the hearing dates, she should first be present in the Court and get leave of the Court to be represented by the Counsel as per Section 13 and thereafter, on the subsequent hearing dates, she can seek for exemption of her appearance by stating reasons. The present petition under Section 205 of Cr.P.C is not maintainable under law and therefore, the trial Court has rightly returned the application.



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8. Since the order of the trial Court is consonance with the provisions of the Family Court Act, this Court finds no reason to interfere the said order. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No.
bsm
To:-
1. The Family Court, Namakkal.



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