



Crl.O.P.(MD)No.17151 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2024

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.17151 of 2022
and Crl.M.P.(MD)No.11563 of 2022

1.P.Suresh
2.P.Saraswathi
3.P.Prabhakaran
4.M.Gowri

...Petitioners

Vs.

A.M.Sarasu

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to withdraw D.V.C.No.58 of 2020 pending on the file of the Additional Mahila Court Judicial Magistrate level Karur and transfer the same to any other Court.

For Petitioners : Mr.M.V.Shankar

For Respondent : Mr.C.Mayilvagana Rajendran

ORDER

This Criminal Original Petition has been filed to withdraw D.V.C.No.58 of 2020 pending on the file of the Additional Mahila Court Judicial Magistrate level Karur and transfer the same to any other Court.



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2.The case of the petitioners is that the first petitioner is the husband of the respondent, the second and third petitioners are mother-in-law and brother-in-law of the respondent and the fourth petitioners is the wife of the third petitioner. The marriage of the first petitioner and the respondent was performed in the year 2009 and they blessed with one female child. However, the first petitioner disputed the paternity of the child. Thereafter, first petitioner/husband has filed H.M.O.P.No.214 of 2012 seeking divorce before the learned Subordinate Judge, Tiruppur. In view of the order passed by this Court in Tr.C.M.P.No.66 of 2013 filed by the Respondent/wife, the case was transferred and re-numbered as H.M.OP.No.56 of 2017 on the file of the learned Subordinate Court, Karur. Again, it was transferred to learned Principal Family Court, Karur, and re-numbered as H.M.O.P.No.152 of 2018. In the meantime, the Respondent filed a Petition under the provisions of Protection of Women from Domestic Violence Act against the first petitioner and his relatives in D.V.P.No.16 of 2021 before the learned Judicial Magistrate No.I, Karur. Therefore, the petitioners along with his relatives were forced to file Petitions in Crl.O.P(MD)Nos.14624 to 14627 of 2012 to quash the D.V.P.No.16 of 2012 (New No is D.V.C.No.58 of 2020), in



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which, except CrI.O.P(MD).No.14624 of 2012, all other Petitions were allowed and liberty was granted to the petitioners therein to file an application for conducting DNA, provided A.M.Sarasu/Respondent herein and her child before the learned Judicial Magistrate No.1, Karur in D.V.P.No.16 of 2012(New number is D.V.C.No.58 of 2020) and also in H.M.O.P.No.152 of 2018 on the file of the learned Family Court, Karur (New number is H.M.O.P.No.86 of 2020 on the file of the learned Principal Family Court, Namakkal). If A.M.Sarasu does not come forward for DNA test, the Courts can draw adverse inference in favour of P.Suresh/first petitioner herein. The Respondent/wife has also filed H.M.O.P.No.155 of 2018 seeking for restitution of conjugal rights.

3.The learned Counsel appearing for the petitioners submitted that as per the direction of this Court, the petitioners had filed C.M.P.No.300 of 2020 in D.V.C.No.58 of 2020 seeking DNA test regarding the paternity of the child born to the Respondent before the Additional Mahila Court (Magisterial level), Karur. Without considering the merits of the case, based on the submissions and materials available before her, the trial Court dismissed the same.



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4.It is the further submission of the learned Counsel for the petitioners that the Respondent has filed a Petition in C.M.P.No.1397 of 2022 in D.V.C.No.58 of 2020 seeking for interim maintenance. The learned Counsel further submitted that in a case claiming maintenance, as per Ruling of the Hon'ble Supreme Court, both parties has to submit the assets and liabilities by filing affidavit or petition before the Court concerned.

5.In this case, the husband had filed a Petition seeking the list of assets and liabilities of the wife. He had also declared his assets and liabilities by way of an affidavit. That petition was not yet numbered.

6.It is the contention of the learned counsel for the petitioners that repeatedly the conduct of the Presiding Judge of the Court (Additional Mahila Court/Magistrate Level, Karur) is found biased against the husband, as the wife having influence within Karur District. Therefore, the petitioners filed a petition in Tr.C.M.P(MD).No.15 to 17 of 2020 to transfer the case in H.M.OP.Nos.152 and 155 of 2018 and M.C.No.12 of 2018 on the file of the Family Court, Karur, to any other Court in the



same District. The learned Single Judge of this Court has passed the following order:

4.Considering the fact that the husband is a resident of Coimbatore and the wife is a resident of Karur, the H.M.O.P.Nos.152 and 155 of 2018 and M.C.No.12 of 2018 pending on the file of the Family Court, Karur, are withdrawn and transferred to the Family Court, Namakkal for being disposed of in accordance with law. The Family Court, Karur is directed to transmit all the above proceedings to the Family Court, Namakkal, forthwith.

5.Both the counsel made a joint request to transfer O.S.No.9 of 2017, which is pending on the file of the Additional District Court for Mahila cases at Karur to the Family Court, Namakkal, to be tried along with H.M.O.P.Nos.152 and 155 of 2018 and M.C.No.12 of 2018.

6.Considering the said request, the O.S.No.9 of 2017 pending on the file of the Additional District Judge for Mahila cases, Karur is withdrawn and it is also transferred to the Family Court at Namakkal to be disposed of along with the other proceedings, which have already been transferred to the said Court. The Additional District Judge for Mahila cases, Karur, is directed to transmit the papers in O.S.No.9 of 2017 to the Family Court, Namakkal, forthwith. No costs. Consequently, connected Miscellaneous Petitions are closed.



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7. Therefore, the contention of the learned counsel for the petitioners that instead of numbering the petition seeking to submit the assets and liabilities of the wife, the learned Magistrate had orally refused to take it on file. He further contented that the Petition for interim maintenance filed by the respondent was posted today (i.e., 23.09.2022) 'for orders'. Therefore, the petitioners apprehends that he will not get a fair trial before the learned Presiding Judge of the Additional Mahila Court/Magistrate level, Karur. Therefore, they seek transfer of the case to any other Court.

8. The learned counsel appearing for the respondent submitted that the respondent will face hardship if the case is transferred and objected to transfer the case.

9. Heard the learned counsel on either side and perused the materials on records.

10. It is seen that a *prima facie* case is made out by the learned counsel for the petitioners and the apprehension expressed by the



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petitioners is found reasonable. Accordingly, the case in D.V.C.No.58 of 2020 pending on the file of the Additional Mahila Court Judicial Magistrate level Karur is hereby withdrawn and the same is transferred to the file of the learned District Munsif cum Judicial Magistrate, Aravakurichi. The Additional Mahila Court Judicial Magistrate level Karur shall transfer all the records relating to the case in D.V.C.No.58 of 2020 to the file of the learned District Munsif cum Judicial Magistrate, Aravakurichi, forthwith. The learned District Munsif cum Judicial Magistrate, Aravakurichi is directed to dispose the case, by providing necessary opportunity to both parties, within a period of six months from the date of receipt of a copy of this order.

11.In the result, this criminal original petition is allowed.
Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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M.DHANDAPANI,J.

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To

- 1.The Additional Mahila Court Judicial Magistrate level, Karur
- 2.The District Munsif cum Judicial Magistrate, Aravakurichi.

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