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Court : Chennai

Decided On : Nov-07-2016

Judge : P.N. Prakash

Appeal No. : Crl.O.P. No. 23920 of 2016

Appellant : G. Krishna Prasad @ Sameer Prasad

Respondent : G. Durga Devi and Another

Judgement :

(Prayer:Criminal Original Petition is filed under Section 407 of Cr.P.C., to withdraw M.C.No.6 of 2013 on the file of the learned Judicial Magistrate-II, Hosur and transfer the same to the III Additional Family Court, Chennai.)

1. The petitioner has come forward with this petition seeking a direction to withdraw M.C.No.6 of 2013 from the file of the learned Judicial Magistrate-II, Hosur and to transfer the same to the III Additional Family Court, Chennai.

2. The first respondent herein/Durga Devi was married to the petitioner/Krishna Prasad on 20.09.2009 and it appears that they have one daughter through the wedlock. Her name is said to be Vedha. Due to the strange behaviours of Durga Devi, the petitioner has filed HMOP.No.737 of 2013 for divorce and the case is pending before the III Additional Family Court, Chennai.

3. The first respondent has filed HMOP No.145 of 2013 before the Sub Court, Hosur for restitution of conjugal rights and pursuant to which, the petitioner had filed C.M.P.No.556 of 2015 before this Court for transferring the HMOP No.145 of 2013 from the file of the Sub Court, Hosur to the III Additional Family Court, Chennai to be tried along with HMOP.No.737 of 2013 and that this Court has ordered interim stay of further proceedings in HMOP No.145 of 2013. While so, the first respondent filed M.C.No.6 of 2013 under Section 125 of Cr.P.C., before the learned Judicial Magistrate-II, Hosur, in which, the petitioner has entered appearance. It appears that M.C.No.6 of 2015 was dismissed for default on 03.09.2014 for non appearance of the first respondent. Thereafter, the first respondent filed Crl.M.P.No.4698 of 2014 in M.C.No.6 of 2013 for restoration of the Maintenance Petition and the same is pending before the learned Judicial Magistrate-II, Hosur.

4. At this juncture, the petitioner has filed this petition seeking transfer of M.C.No.6 of 2013 from the file of the learned Judicial Magistrate-II, Hosur to the file of the III Additional Family Court, Chennai.

5. Ms.Aparna, the learned counsel for the petitioner submitted that the first respondent/Durga Devi has herself admitted that she is residing at Chennai and therefore, no prejudice will be caused to her, if the case is transferred to the file of the III Additional Family Court, Chennai.

6. This Court heard the submissions made by the learned counsel for the petitioner and perused the materials placed on record.

7. Admittedly, M.C.No.6 of 2013 was dismissed for default on 03.09.2014 and restoration petition Crl.M.P.No.4698 of 2014 in M.C.No.6 of 2013 is pending. It is for the learned Judicial Magistrate-II, Hosur to either allow or dismiss the same, if he feels there is no merits. Therefore, this is not the right time to transfer M.C.No.6 of 2013 from the file of the learned Judicial Magistrate-II, Hosur to the III Additional Family Court, Chennai. However, the learned Judicial Magistrate-II, Hosur is directed to complete the enquiry in Crl.M.P.No.4698 of 2014 as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order, if not already disposed of, notice shall also be sent to the first

respondent/Durga Devi for her presence. After the outcome of Crl.M.P.No.4698 of 2014, the petitioner is at liberty to file a fresh transfer petition.

8. With the above observation and direction, this Criminal Original Petition is disposed of.

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