

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Tr.C.M.P.No.525 of 2014

ORDER:

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This petition is filed for withdrawal and transfer of O.P.No.215 of 2015, filed for dissolution of marriage, pending on the file of Family Judge's Court, Warangal to the Judge, Family Court, Vijayawada, Krishna District.

The case of the petitioner is that she is legally wedded wife of the respondent and their marriage was solemnized on 17-05-2009 at Chitti Nagar, Vijayawada, at her parents place, as per Hindu rites and customs. The marriage is consummated and started living at Warangal, where the respondent is working along with his mother. For some time, their matrimonial life went on amicably and out of their wedlock, they were blessed with a female child, now aged about 2 ½ years. Thereafter, the respondent and his family members started harassing and demanding more dowry and even gone to the extent of physically manhandling the petitioner and finally, the respondent brought the petitioner to Vijayawada on 15-08-2013 and left in the office of her Senior paternal uncle, while demanding Rs.2.00 lakhs for rejoining. Thereafter, the respondent filed OP.No. 215 of 2013 on the file of Judge, Family Court, Warangal for dissolution of marriage. Due to unbearable harassment from the respondent and his family members, the petitioner filed complaint for the offence under Section 498-A IPC, which is registered as Cr.No.861 of 2013 of I Town Police Station, Vijayawada. The petitioner also filed M.C.No.208 of 2013 for grant of maintenance to her and her daughter before the Judge, Family Court at Vijayawada. It is stated that it is difficult for the petitioner to prosecute the proceedings at Warangal in the present OP filed by her husband. Further, the petitioner is receiving threatening calls from the respondent and there is no safety for her. As such, the present Tr. CMP is filed.

Counter affidavit is filed by the respondent stating that the transfer application is not maintainable either in the eye of law or on facts and this Court is not vested with jurisdiction to transfer the case pending in the State of Telangana to the State of Andhra Pradesh. The jurisdiction to transfer cases from one High Court or other Civil Court in one State to a High Court or Civil Court of any other State is vested with Hon'ble Supreme Court as per Section 25 (1) of C.P.C. It is stated that petitioner is earning lady and in spite of that, she filed M.C. 208 of 2013 seeking maintenance for herself and her child at the rate of Rs.5,000/- each. When the respondent attended the Court at Vijayawada, he was threatened with dire

consequences by the mother of the petitioner and other persons accompanying the petitioner. That the mother of the respondent was also threatened. The allegation that petitioner received threatening calls from the respondent is denied. That the respondent never called the petitioner at any point of time, since she deserted the respondent. That the presence of petitioner on every date of hearing is not required in OP.No.215 of 2013 filed by the respondent. Hence, sought for dismissal of the Tr.CMP.

Heard learned counsel for the petitioner and learned counsel for the respondent.

When the jurisdiction aspect was raised in the matter, notice was issued to the Advocate Generals of both States of Telangana and Andhra Pradesh.

Learned Advocate General for the State of Andhra Pradesh submitted that as per Section 24 of C.P.C., this Court has jurisdiction to transfer case pending before a Court subordinate to it to any other Court in another State, since this Court exercises jurisdiction over both the States as per Section 24 of C.P.C. As per Section 30 of Andhra Pradesh Reorganization Act, 2014 (for short “ Reorganization Act”), this Court exercises territorial jurisdiction in respect of both the States and since both the Courts are subordinate to High Court, this Court is empowered to transfer OP pending before the Judge, Family Court, Warangal District to the Judge, Family Court, Vijayawada. Even as per Section 31 of Reorganization Act, till a separate High Court is formed for State of Andhra Pradesh, this Court exercises jurisdiction over both the States. He placed reliance on the judgment of Apex Court in **Durgesh Sharma v. Jayshree**^[1]. He also states that since the Courts i.e. Family Court at Warangal and and Family Court, Vijayawada are subordinate to the High Court, this Court has jurisdiction and this Court is empowered to transfer the same.

Learned Advocate General for the State of Telangana by relying on Section 24(1) (b) of C.P.C. states that this Court can withdraw any suit, appeal or other proceeding pending in any court subordinate to it and transfer the same and as per Section 24(1) (b) (ii) of C.P.C. transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same. He refers to Section 3 of C.P.C. and states that District Court is subordinate to High Court and every civil Court inferior to District Court and subordinate to High Court and District Court. As per Article 227 of Constitution of India, every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. In view of the same, it is submitted that this Court

has jurisdiction to entertain the present transfer CMP.

Learned counsel for the petitioner adopted the arguments of both Advocate Generals and submits that Section 25 of C.P.C. does not curtail the power of High Court, which is conferred under Section 24 of C.P.C. He also relied on Paras 47, 48, 51, 53 of the judgment in **Durgesh Sharma's case** (supra 1) in support of his contention.

On the other hand, learned counsel for the respondent by relying on para No.53 of **Durgesh Sharma's case** (supra 1) submits that Section 25 of C.P.C. is a complete code dealing with substantive as well as procedural law and whereas, Section 23 of C.P.C. is procedural one. Section 23 of C.P.C. does not empower this Court to entertain this Tr.CMP. As such, this Court cannot exercise power under Section 24 of C.P.C. to transfer of a case from one State to another State.

Before coming to the facts of the case, it is relevant to extract the relevant provisions of C.P.C. regarding transfer of proceedings.

Section 24: General power of transfer and withdrawal

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage--

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

i) try or dispose of the same; or

ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

iii)

Section 25 (1) of C.P.C: **Power of Supreme Court to transfer suits, etc.,:-**

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“On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal, or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State”.

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Section 30 of A.P. Re-organization Act:

High Court of Judicature at Hyderabad to be common High Court till establishment of High Court of Andhra Pradesh:-

1) On and from the appointed day-

a) the High Court of Judicature at Hyderabad shall be the common High Court for the State of Telangana and the State of Andhra Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under article 214 of the Constitution read with Section 31 of the Act.

b) the Judges of the High Court at Hyderabad for the existing State of Andhra Pradesh holding office immediately before the appointed day shall become on that day the Judges of the common High Court.

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Article 227 of Constitution of India:

Power of Superintendence over all Courts by the High Court.-

(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

In **Durgesh Sharma's case (supra 1)**, which is relied on by both counsels and the learned Advocate Generals of both States, it is held as follows:

2. A short but interesting question of law has been raised before this Court in the present appeal as to the power, authority and jurisdiction to transfer suits/appeals/other proceedings by a High Court from one Court subordinate to it to another Court subordinate to another High Court.

47. In our considered opinion, where several courts having jurisdiction are subordinate to one appellate court, an application for transfer may be made to such appellate court and the court may transfer a case from one court subordinate to it to another court subordinate to it. Likewise, where such courts are subordinate to the same High Court, an application may be made and action may be taken by the High Court transferring a case from one court to subordinate to it to any other court subordinate to that High Court. But where such courts are subordinate to different High Courts, it is only the Supreme Court (this Court) which may pass an order to transfer. In other words, if two courts are subordinate to different High Courts, one High Court has no power, jurisdiction or authority to transfer a case pending in any court subordinate to that High Court to a court subordinate to other High Court. It is only the Supreme Court (this Court) which may order the transfer.

50. The matter can be examined from another angle also. Every court has its own local or territorial limits beyond which it cannot exercise the jurisdiction. So far as this Court is concerned, its jurisdiction is not circumscribed by any territorial limitation and it extends over any person or authority within the territory of India. But, it has no jurisdiction outside the country. So far as a High Court is concerned, its jurisdiction is limited to territory within which it exercises jurisdiction and not beyond it. On that analogy also, a High Court cannot pass an order transferring a case pending in a court subordinate to it to a court subordinate to another High Court. It would be inconsistent with the limitation as to territorial jurisdiction of the Court.]

51. This can be compared with exercise of extraordinary jurisdiction by a writ court under Article 32 or 226 of the Constitution. It is well settled that this Court can exercise power by issuing writs, directions or orders to every

authority within the territory of India (as also those functioning outside the country provided such authorities are under the control of the Government of India). But the jurisdiction of a High Court has territorial limitations. It can exercise the power ‘throughout the territories in relation to which it exercises the jurisdiction’, that is to say, its jurisdiction and the person or authority to whom the High Court is empowered to issue such writs must be within those territories which clearly implies that they must be amenable to its jurisdiction in accordance with law.

57. For all these reasons, in our opinion, the order passed by the High Court is not sustainable and deserves to be set aside. We hold that a High Court has no power, authority or jurisdiction to transfer a case, appeal or other proceeding pending in a court subordinate to it to any court subordinate to another High Court in purported exercise of power under sub-section (3) of Section 23 of the Code and it is only this Court which can exercise the said authority under Section 25 of the Code. The order passed by the High Court, therefore, deserves to be set aside and is accordingly set aside.

Learned counsel for the respondent by relying on the judgment cited (supra) contends that the power of transfer of suit or any other proceedings from one Court in a State to another Court in another State is conferred on the Supreme Court alone under Section 25 of C.P.C.

In the judgment cited (supra 1) question before the Apex Court was power, authority and jurisdiction to transfer suits/appeals/other proceedings by a High Court from one court subordinate to it to another court subordinate to another High Court and while answering the same in para Nos. 47, 50, 51 and 57 held that High Court has no power to transfer suits/appeals/other proceedings from one court subordinate to it to another court subordinate to another High Court. The judgment relied on by the learned counsel for the respondent does not support the case of the respondent. In fact, the said judgment supports the case of the petitioner and in Para No.47 of the said judgment, the Apex Court clearly held that the Court where the case is pending and the Court from which transfer is sought are subordinate to High Court, an application may be made and action may be taken by the High Court transferring a case from one court subordinate to it to any other court subordinate to the High Court. In the present case, since both Courts are subordinate to this Court even as per the judgment of Supreme Court, this Court is empowered to entertain the Transfer CMP and transfer the case. In Para No.50 of the judgment, the Apex Court held that as far as High Court is concerned it exercises jurisdiction within its territorial jurisdiction. As per Section 30 of A.P. Re-organization Act extracted above on and from the appointed day, this Court has territorial jurisdiction to deal with the matters of State of Telangana and the State of Andhra

Pradesh till a separate High Court for the State of Andhra Pradesh is constituted under Article 214 of the Constitution read with Section 31 of the Reorganization Act. Hence, this Court has power of superintendence as per article 227 (1) of Constitution of India over the Courts in both the States. In Para No.51 of the judgment cited supra, it is held that jurisdiction of High Court has territorial limitations. It can exercise the power “throughout the territories in relation to which it exercises the jurisdiction”, that is to say, the writs issued by a High Court cannot run beyond the territory subject to its jurisdiction. The Apex Court further held that High Court has no power, authority or jurisdiction to transfer a case, appeal or other proceeding pending in a court subordinate to it to any court subordinate to another High Court in purported exercise of power under sub-section (3) of Section 23 of the Code and it is only this Court which can exercise the said authority under Section 25 of the C.P.C.

As contended by both Advocate Generals, Section 24 (1) (b) (2) of C.P.C. clearly empowers this Court to withdraw any suit, appeal or other proceeding pending in any court subordinate to it and transfer the same to any court subordinate to it and competent to try or dispose of the same. As such, it cannot be contended that this Court has no power to transfer this CMP. The case before the Supreme Court was altogether on different issue, when the transfer was sought to from one Court subordinate to one High Court to Court subordinate to another High Court. But in the present case, that is not the factual scenario since by virtue of Section 30 of A.P. Reorganization Act and Article 227 of Constitution, this Court exercises the power in respect of territories of both States. In view of the same, this Court has jurisdiction to entertain the same.

Coming to the merits of the case, the petitioner has small child and she has already filed M.C. 208 of 2013 before the Family Court, Vijayawada, Krishna District and she also lodged a complaint before I Town Police Station, Vijayawada in Cr.No.861 of 2013 for the offence under Section 498-A IPC and she states that she is dependant on her mother and she also states that she is receiving threatening calls from the respondent not to pursue the proceedings and it is inconvenient to travel all the way i.e.300 Kms from Vijayawada to Warangal. The respondent has to attend in the cases, which were filed by the petitioner at Vijayawada and the Apex Court in the judgment of **Sumita Singh v. Kumar Sanjay and another**^[2] held that in considering transfer petitions in matrimonial proceedings, convenience of wife has to be considered.

In view of above facts and circumstances, I feel that it is just and proper to transfer OP.No.215 of 2013 pending on the file of Family Court, Warangal to the Family Court, Vijayawada, since M.C.No.208 of 2013 is already pending on the file of Family Court at Vijayawada.

The respondent counsel submits that the presence of respondent may be dispensed with before the Family Court at Vijayawada, as he is not a position to attend each and every date of hearing. As such, the presence of respondent is dispensed with on each and every adjournment except on the date of conciliation and cross-examination and as and when necessary.

Accordingly, the Transfer CMP is allowed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

18-11-2015
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A.RAJASHEKER REDDY,J

[\[1\]](#) (2008) 9 Supreme Court Cases 648

[\[2\]](#) AIR 2002 SC 396