

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Tr.Crl.P. Nos.127 and 128 of 2015 & Tr.C.M.P. Nos.163 and 365 of 2015

COMMON ORDER :

Out of these four Transfer applications, Tr.Crl.P. Nos.127 of 2015 is filed by Dr.B.G.Rahul to withdraw the M.C.No.5 of 2014 pending on the file of Additional Judicial Magistrate of First Class at Karimnagar and transfer the same to any Court at Hyderabad or Secunderabad equally Tr.Crl.P. No.128 of 2015 is filed by said B.G.Rahul and 3 others to withdraw the D.V.C. No.13 of 2015 pending on the file of Additional Judicial First Class Magistrate, Karimnagar and transfer the same to any Court at Hyderabad or Secunderabad.

2) Transfer CMP No.365 of 2015 is filed by Dr.P.Vanitha to withdraw the O.P. No.418 of 2014 pending on the file of Judge, Family Court, City Civil Court, at Secunderabad, for the relief of custody of their daughter, to father from the mother, equally, transfer CMP No.163 of 2015 is filed by Dr.P.Vanitha, who is no other than wife of B.G.Rahul, to transfer the F.C.O.P. No.130 of 2014 pending on the file of Judge, Family Court, Kurnool, which is filed by B.G.Rahul under Section 13 (i) (i) and 13 (Ia) of Hindu Marriage Act, 1955 for decree of divorce dissolving the marriage between respondent No.1 (Dr.B.G.Rahul) and petitioner (Dr.P.Vanitha); against Smt.Vanitha and one Lakshmikanth on the ground of cruelty and alleged extra marital relationship with so-called Lakshmikanth.

3) It is needless to say that C.C. No.65 of 2015 is also pending on the file of XV Additional Chief Metropolitan Magistrate, Hyderabad, where the learned Magistrate has taken cognizance for the offence punishable under Sections 498-A, 323 IPC and Sections 4 & 6 of D.P Act, which is outcome of report of Dr.P.Vanitha in Crime No.170 of 2013 of Women Police Station, Begumpet, North Zone, Secunderabad, against B.G.Rahul and others. She did not seek for transfer of that calendar case from the Hyderabad Court to Karimnagar but for praying to transfer the custody O.P. No.418 of 2014 from Hyderabad Family Court and also the Divorce O.P. No.130 of 2014 from Kurnool to Karimnagar. The reasons assigned by wife in

two transfer applications supra to transfer the two civil matrimonial matters is that she is prosecuting post graduation in Medicine at Karimnagar and staying in a hostel and she is taking care of the three years child under the care and guidance of her mother. While prosecuting the studies it is difficult to her to attend Kurnool and Hyderabad to attend the Courts for the adjournments at the respective two Courts. In fact, the husband seeking to transfer the M.C No.5 of 2014 and D.V.C No.13 of 2015 on the file of respective Judicial Magistrate of First Class at Karimnagar to any Magistrate Court at Hyderabad is by saying, the calendar case C.C No.65 of 2014 (498-A case) is pending in Hyderabad, custody O.P. 418 of 2014 is pending before the Judge, Family Court, City Civil Court, Secunderabad and his wife is permanent resident of Hyderabad and her parents are also settled and residing at Hyderabad and hence for common convenience to transfer all the cases to Hyderabad.

4) Undisputedly, according to her very say, more particularly referring to Tr.C.M.P. No.163 of 2015 at ground No.10, she is joined in Post Graduation in May, 2013 and it is three years course according to her, she can complete the same in May, 2016, though her husband claims it is to be completed by December, 2015 itself. Even taken from that but for to prosecute her studies supra, she has no place of interest or residence at except Karimnagar, but at hostel staying for the studies.

5) Admittedly, she is permanent resident of Secunderabad and even she is staying there if at all she got any further placement or status elsewhere she can represent through GPA holder to attend the Court at Karimnagar or Hyderabad. Thereby, practically there is no justification in her seeking to transfer the matrimonial O.P of Kurnool and custody O.P of Hyderabad to Karimnagar.

6) No doubt the counsel for the petitioner in Tr.CMP No.163 and 365 of 2015 place two expressions one is ***Sumitha Singh vs Kumar Sanjay and another*** where Apex Court held that it is wife's convenience that is main criteria while considering the evidence of the parties in transferring matrimonial matters sought for where the distance is 1100 Kms from Delhi and where she expressed her inability to travel to the city of the Court where the husband maintained the Matrimonial Case No.30 of 2000.

7) The other decision placed reliance is ***T.Gayatri Devi vs Tallepaneni Sreekanth*** where finding fault with the High Court of A.P in dismissing the Transfer Criminal Petition filed by husband to Transfer O.P. No.1256 of 2011 pending in the Family Court, Hyderabad to Family Court at Kakinada, which is her place of staying from inability expressed to attend, the Apex Court allowed the same saying the learned Judge completely overlooked the implication of this view as on the one hand the appellant—wife would be expected to contest the divorce proceeding to her detriment and at the same time would have to undertake the journey from Kakinada to Hyderabad which is bound to affect discharge of her professional duties where she is working as apart from the journey she would also have to seek leave which surely would affect her performance in the company at Kakinada where she works.

8) Here the facts of the two expressions are no way applicable to the present case, from what is referred supra, but for on the principle of considering inconvenience in wife's travelling is more criteria. Even taken from that, once the course is left for six months and there is nothing of any difficulty thereafter for she is staying in hostel and not any permanent abode there, even there is assistance of her mother for the academics; what the wife alleged in the counter in the Transfer CrI.P. No.128 of 2015 of there is likelihood of her getting further studies counseling in the Peripherals, that is not a certainty even but for some contingency and further when her parents are of Hyderabad from what is observed supra at Hyderabad Courts she can represent through her father or mother or GPA holder in the proceedings, if at all any inconvenience for personal attendance in such contingency. Thus, the interest of justice, to sub-serve even considering the inconvenience that would be caused to her on immediate transfer, while retaining MC and DVC at Karimnagar, as these are the summary proceedings for disposal by directing the learned Magistrate to make every effort to dispose off the same within three months from the date of receipt of the common order and by dispensing with the personal appearance of the respondent/ husband in M.C and other respondents if any of the DVC as per Section 126 (2) Cr.P.C since representing through advocate by virtue of this order by the learned Magistrate; Further, the matrimonial O.P pending before the Judge, Family Court, Kurnool is transferred to Family Court, Secunderabad where the custody OP is pending to conduct trial or enquiry in the two cases simultaneously without clubbing.

9) Accordingly, the Transfer Criminal Petitions and Transfer CMPs are disposed of. It is needless to say to allow the matrimonial and custody matters but for any reconciliation, her personal appearance may not be insisted when they are permitted to represent through advocate under Section 13 of the Family Court Act.

10) Miscellaneous petitions, if any pending in the Transfer Criminal Petitions and Transfer CMPs, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.04.11.2015

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