

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P. No.784 of 2014

ORDER:

This petition is filed under Section 24 of C.P.C. to withdraw H.M.O.P.No.672 of 2014 from the file of the Judge, Family Court, Vijayawada and transfer the same to the file of the Senior Civil Judge, Tanuku for disposal in accordance with law.

2. The facts leading to filing of the present petition, in brief, are as follows:

The marriage of the petitioner was performed with the respondent on 21.05.2011 at Duvva Village of West Godavari District as per Hindu Rites and Caste Custom. Immediately after the marriage, the petitioner joined with the respondent to lead happy marital life. The petitioner and the respondent lived together at Vijayawada for a period of three years. Thereafter, disputes arose between the petitioner and the respondent. The petitioner has been residing at her parents' house at Duvva Village. The petitioner lodged a complaint to the Station House Officer, Tanuku Rural Police Station, who in turn registered a case in Crime No.194 of 2013 for the offences punishable under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The learned II Additional Judicial Magistrate of First Class, Tanuku has taken the cognizance of the offences against the respondent and others under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act and numbered it as C.C.No.519 of 2014. The petitioner also filed D.V.C.No.14 of 2014 on the file of the II Additional Judicial Magistrate of First Class, Tanuku against the respondent. The petitioner filed O.P.No.165 of 2014 on the file of the Senior Civil Judge, Tanuku for dissolution of marriage between her and the respondent. The respondent filed H.M.O.P.No.672 of 2014 on the file of the Judge, Family Court, Vijayawada against the petitioner under Section 9 of the Hindu Marriage Act, 1955. Hence, the petition.

3. Learned counsel for the petitioner submitted that the petitioner has no source of income to attend the Court at Vijayawada.

4. Learned counsel for the respondent submitted that the petitioner has foisted a false criminal case against the respondent; therefore, the present petition is liable to

be dismissed.

5. There is no dispute between the parties with regard to their relationship. The fact remains that the petitioner has been residing at the mercy of her parents in Duvva Village since 2013. C.C.No.519 of 2014, D.V.C.No.14 of 2014 and O.P.No.165 of 2014 are pending between the parties in different Courts at Tanuku. H.M.O.P.No.672 of 2014 is pending on the file of the Judge, Family Court, Vijayawada. Invariably, the respondent has to attend the Courts at Tanuku in number of cases. Even if H.M.O.P.No.672 of 2014 is transferred, it may not cause any hardship or inconvenience to the respondent. If H.M.O.P.No.672 of 2014 is not transferred from Vijayawada to Tanuku, it may cause untold hardship to the petitioner. It is not the case of the respondent that the petitioner is having sufficient means to prosecute the case at Vijayawada. The respondent has been working as an employee in V.T.P.S., Ibrahimpatnam, Vijayawada. As rightly pointed out by the learned counsel for the respondent, it may not be possible for the respondent to attend the Family Court, Tanuku in H.M.O.P.No.672 of 2014 on each and every date of adjournment in view of nature of his employment. While deciding this type of petitions, the Court has to take into consideration inconvenience likely to be caused to the wife.

6. At this juncture, learned counsel for the petitioner has drawn the attention of this court to the following decisions:

1. T.Gayatri Devi v. Dr. Tallepaneni Sreekanth, wherein the Hon'ble Apex Court held in Para No.4 as under:

“4.....The learned Single Judge has 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 further and put her job at risk. The import of the order clearly is that on the one hand the appellant-wife should live alone, maintain herself by living at her parents place and on the top of it give more attention to contest the divorce proceeding rather than looking to her job on which she is surviving in absence of any support from her husband who not only seeks a decree of divorce but also at convenience by choosing a place of his choice to secure a decree of divorce.”

2. Rachna Kanodia v. Anuk Kanodia, wherein the Hon'ble Apex Court held as under:

“In a transfer petition for transfer of matrimonial proceedings the convenience that has to be prevail is the convenience of wife and the issue of marriage.”

3. Sumita Singh v. Kumar Sanjay and another, wherein the Hon'ble Apex Court held at Para No.3 as under:

“3. It is the husband's suit against the wife. It is the wife's convenience that, therefore, must be looked at. The circumstances indicated above are sufficient to make the transfer petition absolute.”

As per the principle enunciated in the cases cited supra, the Court has to take into consideration inconvenience likely to be caused to the wife while deciding transfer petitions.

7. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra, I am of the considered view that it is a fit case to transfer H.M.O.P.No.672 of 2014 from the file of the Judge, Family Court, Vijayawada to the file of the Senior Civil Judge, Tanuku.

8. Accordingly, the Transfer Civil Miscellaneous Petition is allowed. H.M.O.P.No.672 of 2014 is withdrawn from the file of the Judge, Family Court, Vijayawada and transferred to the file of the Senior Civil Judge, Tanuku for disposal in accordance with law. The presence of the respondent is hereby dispensed with on each and every date of adjournment before the Senior Civil Judge, Tanuku. However, he shall appear before the Senior Civil Judge, Tanuku as and when his presence is so required. There shall be no order as to costs.

9. Consequently, Miscellaneous Petitions, if any, pending in this Transfer Civil Miscellaneous Petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 05.06.2015

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