

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Tr.CMP.No.74 and 516 OF 2015

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COMMON ORDER :

Tr.CMP.No.74 of 2015:

This transfer petition is filed by the petitioner/wife seeking transfer of OP.No.794 of 2014 filed by the husband for divorce on the file of Family Court, Vijayawada, Krishna District, to the Family Court, Eluru, West Godavari District, to be tried along with OP.No.1 of 2015 which is filed by the petitioner/wife for restitution of conjugal rights.

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Tr.CMP.No.516 of 2015:

This transfer petition is filed by the petitioner/husband seeking transfer of OP.No.1 of 2015 filed by the wife for restitution of conjugal rights on the file of the Family Court, Eluru, to the Family Court, Vijayawada, to be tried along with OP.No.794 of 2014 which is filed by the petitioner/husband for divorce.

The petitioner/wife in Tr.CMP.No.74 of 2015 is the respondent in Tr.CMP.No.516 of 2015 and the petitioner/husband in Tr.CMP.No.516 of 2015 is the respondent in Tr.CMP.No.74 of 2015. As such, both the petitions are heard and disposed of together as common issue is involved.

The facts of Tr.CMP.No.74 of 2015 are that the petitioner is the legally wedded wife of the respondent and their marriage was solemnized on 28.02.2009 according to Hindu Marriage rites and customs at Eluru, West Godavari District; that admittedly, no issues were born to them and that after the marriage the respondent and his family members subjected the petitioner to

both physical and psychological torture and finally necked out the petitioner from the matrimonial home on 14.03.2009. It is also stated that as the petitioner has no other go she is staying with her parents at Eluru. Meanwhile, the respondent filed OP.No.794/2014 on the file of Family Court at Vijayawada against the petitioner seeking dissolution of the marriage. Thereafter, basing on the petitioner's report the Eluru Women Police Station registered a case in Crime No.70/2014 on 17.11.2014 against the respondent. Thereafter, the petitioner also filed OP.No.1 of 2015 on the file of Family Court, Eluru seeking restitution of conjugal rights and also DVC.No.2/2015 on the file of II Additional Judicial First Class Magistrate, Eluru against the respondent. The grievance of the petitioner is that it is very difficult for her to attend the Court at Vijayawada, which is 75 k.ms. away from Eluru, without any male assistance for every date of adjournment as it involves both physical and financial burden. It is also stated that to avoid multiplicity of proceedings and conflicting decisions, it is just and necessary to transfer OP.No.794/2014 filed by the respondent before the Family Court, Vijayawada to Eluru, where OP.No.1/2015 filed by the petitioner is pending.

On the other hand the facts of Tr.CMP.No.516 of 2015 are that the petitioner/husband is working at Yerrupalem, Khammam District and residing at Jaggaiahpet, Krishna District which is nearer to Vijayawada and that the distance between Yerrupalem to Eluru is about 140 k.ms. and if his OP is transferred to Eluru it is very difficult for him to travel all the way to Eluru and that since the distance between Eluru and Vijayawada is about 60 k.ms., it is very convenient for the respondent/wife to travel from Eluru to Vijayawada.

In both the transfer petitions counters are filed reiterating the pleadings in their petitions.

Heard learned counsel for the petitioner/wife in Tr.CMP.No.74/2015 who submits that the respondent levelled serious allegations against the petitioner and that it is difficult for the petitioner to travel all the way from Vijayawada to Eluru, as she has no financial source and is dependent upon her father. He also submits that DVC.No.2/15 and the complaint in Crime No.70/2014 filed by the petitioner are pending at Eluru and the respondent/husband has to attend those proceedings also and as such, he sought transfer of OP.No.794 of 2014 to the Family Court, Eluru to be tried along with OP.No.1/2015 to avoid conflicting decisions.

On the other hand learned counsel for the respondent/husband submits that now the respondent is transferred to a remote place in Waragal District and it is very difficult for him to attend the Courts at Eluru and that Vijayawada is the right place for both the wife and husband to attend the proceedings. He also submits that there is threat to the life of the husband when he attends Court proceedings at Eluru.

Now it is to be seen that the DVC.No.2/2015 and the criminal proceedings under Section 498-A IPC initiated by the wife against the respondent/husband are pending on the file of II Additional Judicial First Class Magistrate, Eluru and Eluru Women Police Station, respectively and the husband has to attend those proceedings along with OP.No.1/2015. Though, the counsel for the respondent/husband states that now the husband is transferred to Warangal District, any how, the husband has to travel from

Warangal for attending the Court proceedings Eluru. Further, the wife pleaded that she has no male assistance and financial source to travel. Though, it is stated that there is threat to the life of the husband, but no complaint is given at Eluru when he attended the proceedings in DVC.No.2/2015 or OP.No.1/2015.

The Apex Court in ***Sumita Sing v. Kumar Sanjay and another***^[1] held that in transfer of matrimonial proceedings initiated by the husband against wife, it is the convenience of wife that has to be looked at.

In view of the above facts and circumstances, I deem it proper to transfer OP No.794 of 2014 pending on the file of the Family Court, Vijayawada, Krishna District to the Family Court, Eluru, West Godavari District to be tried along with OP.No.1 of 2015.

Accordingly, Tr.CMP.No.74 of 2015 is allowed and Tr.CMP.No.516 of 2015 is dismissed. However, the presence of the husband is dispensed with except on the dates of conciliation, cross-examination or any other dates the Court below feels necessary. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in both the transfer petitions, shall stand closed.

A.RAJASHEKER REDDY, J

08.12.2015
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^[1] AIR 2002 SUPREME COURT 396