

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Tr.CMP.No.544 OF 2015

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ORDER:

This transfer petition is filed seeking transfer of HMOP.No.10 of 2015 pending on the file of the Senior Civil Judge, Machilipatnam, Krishna District to the Senior Civil Judge, Razole, East Godavari District in which HMOP No.27 of 2015 is pending.

The case of the petitioner is that her marriage with the respondent took place on 04.05.2013 according to Hindu customs and traditions at Padamatipalem Village, Malkipuram Mandal and that though the marriage was consummated they have no children. It is also stated that they lived happily for two months but thereafter the respondent started harassing the petitioner for additional dowry and filed HMOP.No.10/2015 on the file of Senior Civil Judge, Machilipatnam seeking dissolution of marriage. But, since the petitioner want to lead happy marital life with the respondent she filed HMOP No.27/2015 on the file of Senior Civil Judge, Razole, East Godavari district seeking restitution of conjugal rights. The petitioner also filed MC.No.10/2015 on the file of JFCM, Razole seeking maintenance. The grievance of the petitioner is that her parents are aged and they can not accompany her every time to appear and defend the case at Machilipatnam and the distance between Padamatipalem to Machilipatnam is about 200 K.Ms. and it is very difficult for her to travel all the way for each and every hearing as it involves both physical and financial burden. As such, sought transfer of OP.No.10/2015 from Machilipatnam to Razole where HMOP.No.27/2015 filed by her seeking restitution of conjugal rights is pending.

The respondent filed counter stating that due to the rude behaviour of the petitioner the respondent filed HMOP No.10/2015 seeking dissolution of marriage; that the respondent filed the said OP in the month of January 2015 and as a counter blast only to compel the respondent and his family members to accept the unlawful demands of the petitioner, the petitioner instituted both the cases i.e. HMOP.No.27/2015 and MC.No.10/2015 seeking restitution of conjugal rights and maintenance, respectively, at Razole. It is further stated that there is threat to the life of the respondent at Razole and that the petitioner filed both the cases with an ulterior motive and finally sought for dismissal of the present transfer petition.

Learned counsel for the petitioner submits that it is very difficult for the petitioner to travel all the way from Padamatipalem to Machilipatnam to defend OP.No.10/2015 and her parents are not in a position to accompany her and that the petitioner is not sound financially to attend the Court at Machilipatnam for every hearing. Learned counsel also states that now the respondent is residing at Chinnagollapalem Village, Krishna District which is 25 K.Ms. away from Razole and it will be convenient for the respondent to attend the court at Razole. He also relied on the Judgment reported in ***Sumita singh v. Kumar Sanjay and another*** ^[1] wherein the Supreme Court 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.

On the other hand learned counsel for the respondent states that deliberately the petitioner filed OP.No.27/2015 and MC.No.10/2015 as a counter blast to OP.No.10/2015 filed by the

respondent seeking dissolution of the marriage. He further states that convenience of both parties have to be looked into while deciding the transfer petitioners and in support of that contention he relied on the Judgement in ***Kulwinder Kaur alias Kulwinder Gurcharan Singh v. Kandi Friends Education Trust*** ^[2].

In this case admittedly the respondent is residing at Chinnagollapalem Village, Krishna District and it is 25 K.Ms away from Razole and as such when OP.No.10/2015 pending on the file of the Senior Civil Judge, Machilipatnam is transferred to Razole, it will be convenient for the respondent. More so, OP.No.27/2015 and MC.No.10/2015 filed by the petitioner seeking restitution of conjugal rights and maintenance, respectively, are pending on the file of Senior Civil Judge and JFCM, Razole, respectively. Further, if OP.No.10/2015 filed by the respondent seeking dissolution of marriage is transferred to the Court of Senior Civil Judge, Razole the same can be tried along with OP.No.27/2015 which is filed by the petitioner seeking restitution of conjugal rights, to avoid conflict of decisions. As the Judgment relied on by the respondent pertain to transfer of suits, it is not applicable to the present case.

In view of the aforesaid facts and circumstances the transfer petition is allowed and OP.No.20/2015 pending on the file of the Senior civil Judge, Machilipatnam, Krishna District is transferred to the Court of the Senior Civil Judge, Razole, East Godavari District to be tried along with OP.No.27 of 2015.

As a sequel thereto, miscellaneous petitions, if any pending shall stand closed.

16.11.2015
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[\[1\]](#) (2001) 10 Supreme Court Cases 41
[\[2\]](#) AIR 2008 Supreme Court 1333