

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

Tr.C.M.P. No.396 of 2013

ORDER:

This petition is filed under Section 24 of C.P.C. to withdraw H.M.O.P.No.54 of 2013 from the file of the Senior Civil Judge, Bhimavaram, and transfer the same to any other competent Court in Nellore for disposal in accordance with law.

2. Learned counsel for the petitioner submitted that the petitioner, being a lady, is not in a position to attend the Court at Bhimavaram to defend her case.

3. Learned counsel for the respondent submitted that there is a life threat to the respondent/husband and, therefore, the present petition is liable to be dismissed.

4. I have carefully perused the affidavit filed in support of the petition and also the counter filed by the respondent in order to appreciate the rival contentions.

5. It is an admitted fact that the marriage of the petitioner was performed with the respondent on 05.08.2009 at Ananda Functional Hall, Bhimavaram, as per Hindu Rites and Caste Customs. Immediately after the marriage, the petitioner joined the respondent to lead happy marital life. Out of lawful wedlock, the petitioner and the respondent were blessed with a son by name

Raj Adithya on 24.07.2010. Unfortunately, bad weather prevailed in the family life of the petitioner and the respondent, which prompted them to approach different Courts for redressal. The petitioner has been residing at her parents house in Nellore along with her son. The petitioner lodged a complaint to the Station House Officer, II-Town Police Station, Nellore, who, in turn, registered a criminal case against the respondent under Section 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, 1961. While the things stood thus, the respondent filed H.M.O.P.No.54 of 2013 on the file of the Senior Civil Judge, Bhimavaram, for restitution of conjugal rights. As per the allegations made in the counter, there is a life threat to the respondent. As per the averments made in the affidavit filed in support of the petition, the respondent subjected the petitioner to cruelty. It is not uncommon to make allegations and counter allegations in matrimonial cases to gain sympathy of the Court. While disposing of the transfer petitions in matrimonial cases, the Court is not supposed to express any opinion touching the merits of the main

case. The stand of the respondent that there is a life threat to him at Nellore, is not supported by any material, much less cogent and convincing material. Invariably, the respondent has to appear in criminal case, which is pending on the file of the Judicial Magistrate of First Class, Nellore. The distance between Bhimavaram and Nellore is nearly 260 KMs. It may not be possible for the petitioner to travel 260 KMs. along with her minor son to defend the case at Bhimavaram. If the petition is dismissed, it may cause untold hardship to the petitioner. While deciding the cases of this nature, the Court has to take into consideration the inconvenience likely to be caused to the wife.

6. As per the principle enunciated in **T.Gayatri Devi**

v. Dr. Tallepaneni Sreekanth, Rachna Kanodia v. Anuk Kanodia and **Sumita Singh v. Kumar Sanjay and another**, the paramount consideration, in transfer of matrimonial cases, is the convenience of the wife.

7. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the relief sought for by the petitioner deserves to be allowed.

8. In the result, the Transfer Civil Miscellaneous Petition is allowed. H.M.O.P.No.54 of 2013 is withdrawn from the file of the Senior Civil Judge, Bhimavaram, and transferred to the file of the Judge, Family Court, Nellore, for disposal in accordance with law. 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:12.06.2015

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