

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.678 of 2016

ORDER:

This is a wife's application under Section 24 of the Code of Civil Procedure, 1908, requesting to withdraw DOP.No.33 of 2016 on the file of the Court of the learned Senior Civil Judge, Sanga Reddy at Medak District, and transfer the same to the Family Court at Vijayawada, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of *Sri Y. Ramatirtha*, learned counsel for the petitioner-wife, and of *Sri B. Nalin Kumar*, learned counsel for the respondent-husband. I have perused the material record.

3. Though in the pleadings of the parties, they have traded serious allegations, this Court has to now consider the relevant contentions of the parties sans serious allegations as while making an order in a petition of this nature, this Court will not enter into merits of the main matter and record findings which will have a bearing on the issues involved in the main matter. Therefore, sans the allegations which are not necessary, the relevant contentions of the petitioner-wife, in brief, are as follows: - 'After estrangement between the spouses, she is presently residing along with her parents at Tadigadapa of Vijayawada of Krishna District. She is a graduate in Technology (Electrical Engineering). She hails from a respectful family. Her father is doing business at Vijayawada. While studying B.Tech final year, she married the respondent, who was also by then pursuing his course in engineering. The respondent did not complete his education. After the disputes, the respondent filed the aforementioned OP in the Senior Civil Judge's Court at Sangareddy. The petitioner filed a criminal complaint and pursuant thereto a case in Crime No.561 of 2016 was registered by Penamaluru Police Station for the offences punishable under Section 120(b), 406, 420 and

498 IPC and investigation into the said crime is in progress. The respondent is of abnormal behaviour and therefore there is a life threat at his hand in case she is required to go to Sangareddy. She is financially weak and physically incapacitated to undertake travel from Vijayawada to Sangareddy and attend the Court case. As per settled legal position, the wife's convenience has to be preferred and shall prevail.'

4. Shorn of un-necessary details, the case of the respondent-husband, in brief, is this: -'He is deaf and dumb by birth. Because of his disability he stopped to pursue his further education, B.Tech. Having had knowledge of his disability, the petitioner married him. Later she voluntarily deserted him and is presently staying with her parents. In the circumstances, the OP is filed under Section 131(ia) & (ib) of the Hindu Marriage Act, 1955, on 16.04.2016. She attended the said Court on three successive adjournment dates and when the matter is posted to 02.12.2016 for filing her counter, the present petition seeking transfer of that case is filed. After the husband filed the said OP, the criminal complaint was lodged as a counter blast. There is no life threat as falsely alleged. Though generally the convenience of the wife has to be preferred, in view of the peculiar facts of this case, there are no grounds made out by the wife for transfer of the case filed by the husband as prayed for in the petition.'

5. I have bestowed my attention to the facts and submissions. Admittedly, the husband is a deaf and dumb person. The petitioner-wife is an educated person having completed her graduation in Electrical Engineering. Though she contends that she is presently unemployed, the case of the respondent-husband is that she is gainfully employed and is presently working at Hyderabad. In the case on hand, in view of the disability of the husband and the further fact that the wife attended the Court at Sangareddy on three dates of adjournment, her contention that she apprehends danger to her safety in case she is required to

go to Sangareddy remains unsubstantiated. Moreover such allegations and counter allegations are not uncommon in matters of this nature and as observed by the Supreme Court in *Sangeeta @ Shreya v. Prasant Vijay Wargiya* [(2004) 13 SCC 407], any threat to her can always be reported to the Court for necessary further action and such unsubstantiated allegations cannot be a decisive factor in this adjudication.

6. At the hearing, the learned counsel for the wife made an alternative contention that if not to the Court at Vijayawada, the case may be transferred to any other Court convenient to both parties. This Court finds that there is no substance even in the alternative contention and the said contention does not merit consideration.

7. On a careful analysis of the contentions and submissions made in line with the contentions and after giving detailed and thoughtful consideration to the totality of the circumstances, this Court finds that the inconvenience of the wife does not outweigh the inconvenience of the husband in the present case.

8. Viewed thus, this court finds that there is no merit in the petition and the petition is liable to be dismissed.

9. The TrCMP is accordingly dismissed.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

24th November, 2016
Vjl