

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.301 OF 2016

ORDER:

This transfer criminal Petition, under Section 407 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed to withdraw DVC No.76 of 2016 pending on the file of Special Judicial First Class Magistrate For Excise, Eluru, West Godavari, and transfer the same to any other competent court in Rangareddy District.

The main grounds raised in the petition are that,

- 1) the second respondent could manage the police in connection with the offence punishable under Section 498-A of Indian Penal Code, 1860 (for short, 'I.P.C.') and he has drawn the attention of this Court to the order passed by this Court in CrI.P.No.9896 of 2016, where there is an observation regarding the receipt of report and not registered the crime, and that it is contended that they managed the police and got registered the crime with ante date. Thus, they influenced the police;
- 2) None of the alleged incidents of domestic violence took place within the limits of Eluru Court and the entire allegations would have taken place within the limits of Rangareddy District;
- 3) the petitioners apprehending danger in the hands of second respondent and there is every possibility of implicating them in many cases due to influence of the police;
- 4) a petition filed, under Section 9 of the Hindu Marriage Act, 1956, for restitution of conjugal rights is also pending before the Court in Rangareddy District.

In view of the above circumstances, the petitioners sought withdrawal of D.V.C. No.76 of 2016 pending on the file of Special Judicial First Class Magistrate for Excise, Eluru, West Godavari

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District, and transfer the same to any Court at Rangareddy District.

The first and foremost contention of the counsel for the petitioners is that the second respondent is able to manage the police and got foisted the false cases with ante date. She also filed DVC No.76 of 2016 following necessary procedure provided under the Protection of Women From Domestic Violence Act, 2005 seeking relief for payment of compensation and refund of 1.12 ½ cents fish tank and Rs.5,00,000/- cash and 10 sovereigns gold entrusted with the petitioners at the time of marriage with interest 24% per annum and also claimed shared accommodation, protection and maintenance under Sections 18, 19, 20 and 21 of the Act.

The police having nothing to do with the proceedings in domestic violence cases and hence question of influencing the Police in the domestic violence case does not arise.

The second ground urged by the counsel for the petitioners is that the acts of domestic violence complained against the petitioners had taken place only within the jurisdiction of Rangareddy district. Therefore, the court at Eluru had no jurisdiction.

The third ground urged by the petitioners is that there is every possibility of implicating them in false case while attending the court in connection with DVC No.76 of 2016 pending before the Special Judicial Magistrate of First Class for Excise, Eluru, West Godavari.

There is no basis for such apprehension as on today except making bald allegations regarding apprehension. So far as threat or danger to their life is concerned, the learned Magistrate is directed to provide necessary police protection to the petitioners, whenever they attend the court in connection with the DVC, subject to bearing expenses, if any. Therefore, apprehension is misplaced and it is not a ground to withdraw and transfer DVC No.76 of 2016 to any court at Rangareddy District.

The last ground raised by the counsel for the petitioners is that pendency of a petition filed under Section 9 of Hindu Marriage Act, 1956 before the Court at Rangareddy District, for restitution of conjugal rights, is not a ground to withdraw the matter, since the first petitioner allegedly neglected, and she is not being provided any amount towards maintenance, and hence, it is difficult for her to attend the court at Rangareddy District being a woman without any independent means.

As seen from the allegations made in the petition, she claimed maintenance besides other reliefs, and refusal and neglect to maintain the second respondent herein gives rise to cause of action for filing the petition along with other reliefs, where she is residing. Therefore, it is not a ground to grant relief under Section 407 Cr.P.C.,

In **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER**¹ this Court held that remedies under D.V Act are civil remedies, the Magistrate in view of his powers under Section 28(2) of D.V Act shall issue notice to the parties for their first

¹ 2015(2) ALD (CrL) 470

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appearance and shall not insist for the attendance of the parties for every hearing and in case of non-appearance of the parties despite receiving notices, can conduct enquiry and pass exparte order with the material available. It is only in the exceptional cases where the Magistrate feels that the circumstance require that he can insist the presence of the parties even by adopting coercive measures. In view of the principle laid down in the judgment in **GIDUTHURI KESARI KUMAR's** case referred above, the petitioners need not attend the court in connection with DVC No.76 of 016 on each and every adjournment, but whenever they are required to attend the court, the Magistrate is directed to provide necessary police protection subject to bearing expenses.

In view of my foregoing discussion, I find no ground to withdraw DVC No.76 of 2016 from the file of Special Judicial First Class Magistrate for Excise, Eluru, West Godavari, and transfer the same to any court at Rangareddy District and the criminal petition is liable to be dismissed.

With the above direction, the transfer criminal petition is disposed of.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 25.11.2016
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