

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.293 OF 2016

ORDER:

This transfer criminal petition, under Section 407 of Code of Criminal Procedure 1973, is filed to withdraw MC No.49 of 2016 pending before the Judge, Family Court, Secunderabad, and transfer the same to the Judge, Family Court, Ongole, on the ground that the petitioner is suffering from vision and hearing defect and also suffering from senility due to advanced age of 72 years.

The petitioner, though raised such contention, did not produce any documentary evidence like Medical Certificate in support of his contention. At the same time, the first respondent, wife of the petitioner is sufficiently old, aged 65 years and she filed MC No.49 of 2016 before the Judge, Family Court seeking maintenance under Section 125 Cr.P.C., having no means to maintain herself. If the said maintenance case is withdrawn and transferred to any court in Ongole, she has to undertake journey, in such condition, without any means to maintain herself, and therefore, it is difficult for her to attend the court at Ongole, if transferred.

While deciding the transfer application, the court has to strike the balance between convenience and inconvenience of both parties. Here the inconvenience to be caused to the first respondent, being the wife having no means to maintain herself, will be greater than the inconvenience of petitioner, who filed the

petition for transfer under Section 407 Cr.P.C. In such case it is difficult to exercise jurisdiction under Section 407 Cr.P.C. and transfer to any other court at Ongole, since the inconvenience being caused to the first respondent is greater than the inconvenience being caused to the petitioner.

Learned counsel for the petitioner would contend that the petitioner suffering from old age, ailments including vision and hearing defect.

But it is not a ground to transfer the MC, in the absence of any documentary proof in support of the contention of the petitioner.

Therefore, considering the inconvenience being caused to both the parties, the petition cannot be allowed at this stage.

Learned counsel for the petitioner requested this Court to dispense with the appearance of the petitioner in the maintenance case.

Dispensation of the appearance of the petitioner can be exercised by the Judge, Family Court. Hence, the petitioner can file an application to dispense with his appearance either under Section 37 of Criminal Rules of Practice or under Section 205 Cr.P.C., after due service of notice to the respondent herein.

On filing such application, the learned Judge, Family Court, Secunderabad, shall consider the request of the petitioner on the same day, subject to his appearance as and when required.

- 3 -

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

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

M. SATYANARAYANA MURTHY, J

Date: 15.11.2016
BV

