

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.298 of 2016

ORDER:

This application under Section 24 of the Code of Civil procedure, 1908, is filed by the petitioner, who is the father-in-law of the respondent, requesting to withdraw O.P.No.211 of 2016 on the file of the Family Court, City Civil Court, Secunderabad, and transfer the same to the file of the Family Court, Nalgonda, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of *Sri N. Mukunda Reddy*, learned counsel for the petitioner, and of *Sri A. Ravi Shankar*, learned counsel for the respondent. I have perused the material record.

3. The facts, which are necessary for consideration, in brief, are as follows:

The marriage of the respondent with the daughter of the petitioner was performed on 05.11.2009. Under lawful wedlock, the deceased daughter of the petitioner gave birth to two sons, who are presently aged 5 and 3 years. On her death on 09.08.2015, the petitioner lodged a complaint against the respondent and his family members for the offences punishable under Section 498-A and 306 read with Section 34 IPC. Now the two children are staying with the petitioner at Nalgonda town. The eldest child is pursuing education at Nalgonda is not in dispute. While so, the respondent filed the aforementioned OP in the Family Court at Secunderabad for custody of the children. Now the petitioner seeks transfer of the said OP to the Family Court at Nalgonda.

4. Sans unnecessary allegations, the case of the petitioner in support of the said request is this: - “Since the date of death of his daughter on 09.08.2015, the grandchildren are staying with him at his residence and he is taking care of the children. After the OP is filed, he entered appearance and sought time for filing counter. The said OP is filed as a counter-blast to the criminal case filed against the respondent. The children are attending school at Nalgonda. The respondent is having association with antisocial elements. The petitioner is not in a position to defend the case filed by the respondent in the Court at Secunderabad. The respondent is not paying any amount towards maintenance of the children. The petitioner is a retired person. In the circumstances stated, he is not able to undertake travel on each date of adjournment from Nalgonda to Secunderabad.”

5. Per contra, apart from denial of the allegations made by the petitioner, the case of the respondent, in brief, is this: - ‘His wife’s death is a natural death. Taking advantage of her death, a false police complaint was filed. When the children are at Hyderabad and are attending to school, the petitioner took away the children from the custody of the respondent after lodging the false police complaint. When the respondent went to Nalgonda to see his children, he was badly assaulted by the petitioner, who is a retired police officer. Therefore, it is difficult for him to prosecute his case at Nalgonda in case it is transferred to a Court at Nalgonda. On account of his employment as Chief Editor, his presence is always required in his office. The petitioner being a retired person has no inconvenience to attend the Court case at Secunderabad.’

6. I have bestowed my attention to the facts and submissions.

7. It is to be first noted that in a case of this nature where the custody of children is the subject matter, the paramount consideration is the welfare of the children. The children are staying with the petitioner, who is their maternal grandfather, since more than a year by now. Admittedly, the eldest child is of 5 years of age and is pursuing his early education at Nalgonda. The only contention in the counter of the respondent is that when the respondent went to Nalgonda to see the children, he was badly assaulted and therefore he is not in a position to go to Nalgonda and that therefore if his case is transferred to Nalgonda, it is difficult for him to prosecute his case. As rightly pointed out by the learned counsel for the petitioner, except making a bald allegation no details of such incident of assault like the date and place are mentioned in the counter. It is not the case of the respondent that on such alleged assault any police complaint was lodged. In cases of this nature, it is not uncommon for parties to make such allegations against each other. In *Sangeeta @ Shreya V/s Prasant Vijay Wargiya*¹, when the husband claimed that he has no income and that he apprehends threats to life and liberty if he is made to go Kota, Rajasthan, the place of residence of his wife, the Supreme Court observed that we are still living in a civilized society and hence there is no substance in the submission of the husband that there would be danger to his life if he has to attend the Court at Kota and further held that if any threat is given, the husband can always complain to that Court and that such complaint, if any, will be considered by that Court on its merit and accordingly allowed wife's petition for transfer of the case filed by the husband. Therefore, any

¹ (2004) 13 SCC 407

threat to him can always be reported to the Court for necessary further action and such unsubstantiated allegations cannot be a decisive factor in this adjudication. Therefore, this Court finds no merit in the contention of the husband, which is unsubstantiated.

8. On the above analysis, this Court finds that there is considerable merit in the request of the petitioner in the transfer petition.

9. In the result, the petition is allowed and OP.No.211 of 2016 on the file of the Family Court, City Civil Court, Secunderabad, is withdrawn from the file of the said Court and is transferred to the file of the Family Court, Nalgonda, for trial and disposal, in accordance with the procedure established by law.

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



M. SEETHARAMA MURTI, J

01st December, 2016
Vjl