

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.501 of 2016

ORDER:

This is a wife's application under Section 24 of the Code of Civil procedure requesting to withdraw F.C.O.P. No.98 of 2016 on the file of the Family Court, Khammam, and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of Sri T. M. K. Chaitanya, learned advocate for the petitioner-wife and Sri N.V. Anantha Krishna, learned advocate for the respondent-husband. I have perused the material record.

3. The case of the wife, which is relevant for consideration, in brief, is as follows: "After desertion by the husband and estrangement in June, 2015 on account of various issues between the spouses, the wife filed M.C. No.15 of 2016 on the file of the Family Court, Ranga Reddy District at L.B. Nagar. The wife is conferred with a right and given liberty to file a maintenance case at a place of her choice including the place where she resides. Further, the marriage of the parties was performed at Uppal which is within Ranga Reddy District. She also filed before the said Court F.C.O.P. No.98 of 2016 under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. The said cases were filed on 06.01.2016. On 09.06.2016, the respondent-husband filed F.C.O.P. No.98 of 2016 on the file of the Family Court, Khammam, under Section 13 (1) (ia) of the Hindu Marriage Act, 1955, for granting a decree of divorce. The said OP was filed by the husband only to harass her. The wife is unemployed and is now residing with her parents at Khammam. She has no acquaintances at Ranga Reddy. She has no personal support or assistance to undertake travel to Khammam. It is difficult and unsafe for her to travel alone from Ranga Reddy District to Khammam, which is

at a distance of 280 kilometers. As per settled law, the convenience of the wife should prevail while considering a request for transfer of a matrimonial case.”

4. The case of the husband, which is relevant for consideration, in brief, is as follows: “Khammam and Hyderabad are well connected by rail and road. The distance between the said two places is only 180 kilometers. There is no inconvenience except unwillingness on the part of the wife. She is only unwilling to come to Hyderabad. She is of 24 years of age and is hale and healthy. She holds a degree in Bachelor of Technology. Women similarly placed are even going abroad. Her parents, brothers and relatives who live in Hyderabad can escort her. Her grandfather hails from Khammam. He worked as an Engineer at Khammam for several years and the wife’s mother studied at Khammam. They have many relatives at Khammam. The husband is running a Petroleum out let at Khammam. The said business in essential commodity requires day to day supervision in view of the surprise inspections that may be made by the officers of the various departments. The case was filed by the husband at Khammam as both the parties lived at Khammam till the wife left the husband’s company. She made false allegations to have the case transferred and protract the litigation comfortably and make the husband suffer and continue further negotiations for huge money. Further, the husband being the *dominus litus* in the case filed by him, the said case filed by him cannot be transferred to any other Court from the Court where the case was instituted. The petition of the wife is liable for dismissal.”

5. Now the point for consideration is –

Whether the petitioner-wife made out valid and sufficient grounds for withdrawal of F.C.O.P. No.98 of 2016 from the file of the Family Court, Khammam, and to transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar?

6. POINT:

6.1 The wife's case is that though she is a graduate in Technology, she is unemployed and staying at the mercy of her parents at Ranga Reddy District and that she had already filed two cases one for grant of maintenance and the other for restitution of conjugal rights and that the said cases are pending on the file of the Family Court at Ranga Reddy District and that the husband filed the case for grant of divorce in the Family Court at Khammam only as a counter blast and to harass her and that there is nobody to either assist her at Khammam or accompany her to Khammam and that it is not safe for her to travel alone on every date of posting of the case to Khammam, which is at a distance of 280 kilometers, and that she is not in a position to meet travel expenses and that in the circumstances stated by her it is highly inconvenient for her to contest the case filed by her husband in the Family Court at Khammam and that on the contrary no prejudice would be caused to her husband if the case filed by him is transferred from the Family Court at Khammam to the Family Court at Ranga Reddy District, as he is doing business and earning huge income. Further, the petroleum outlet of the husband would be open all the twenty-four hours. Any owner of a petroleum outlet would spend eight hours per day at the outlet and the business in his absence would generally be looked after by manager and staff and therefore the presence of the husband of the petitioner at the place of his business all the time and on all the days is not necessary. Hence, the contention that on account of his business he cannot move out of Khammam cannot be countenanced.

6.2. Per contra, the further case of the husband is this: 'The wife who is a graduate in engineering is hale and healthy and that she can undertake travel all alone to Khammam, which is at a distance of only 180 kilometers and is well connected by rail and road and that her parents can escort her and that his petroleum out let business requires day to day supervision in view of the

surprise inspections that may be made by the officers of the various departments and that he filed his case in the Family Court at Khammam not as a counter blast but for valid reasons and as both the parties lived at Khammam till the wife left the husband's company.' He further contends that the wife made false allegations to have the case transferred and protract the litigation comfortably and make him suffer and enable her to continue further, the negotiations for extracting huge money.

6.3 Though the husband contends that it is not inconvenient for the wife if the case is allowed to continue in the Family Court at Khammam and that it would be highly inconvenient for him if his case is transferred from the said Court at Khammam, the fact remains that the two cases filed earlier in point of time by the wife are pending in the Family Court at Ranga Reddy, the present place of residence of the wife. The husband is doing profitable business and is better placed than the wife. Though the learned counsel for the husband placed reliance on a decision in Smt. Sushila v. Ravinder [T.A.No.174 of 2013 (O & M)] rendered on 30.10.2014 by the High Court of Punjab and Haryana at Chandigarh, a perusal of the said decision reflects that the decision in that case turned on facts peculiar to that case particularly the fact that there is no inconvenience to the wife in travelling 5 kilometers more if she attends the Court at Jhajjar instead of at Bhiwani. Though the learned counsel read certain portions of the said decision wherein there was reference to certain precedents, no reliance was placed on the said precedents by producing the journals wherein such precedents are reported or copies thereof. Similarly, though some case law was referred to in the petition of the wife, no reliance was placed on the said precedents by producing the journals wherein such precedents are reported or copies thereof. In the well considered view of this Court, the wife's convenience need not be looked into and given preference if only there are special circumstances warranting the same.

6.4 In a matter of this nature, in the considered view of this Court, the convenience of the wife is to be preferred over the convenience of the husband. The view of this Court that the convenience of the wife has to be looked into finds support from the ratio in the decision in Lalita V/s Kulwinder Kumar¹. In the case on hand the husband did not state in his Counter that he is willing to pay the necessary travelling and incidental expenses to the wife to facilitate her appearance in the proceeding filed by him in the Family Court at Khammam. In the decision in Rajani Kishor Pardeshi V/s Kishor Babulal Pardeshi², despite an offer made by the husband to pay the expenses for his wife's travel to Mumbai, the Supreme Court held that the convenience of the wife is to be preferred over the convenience of the husband and allowed the wife's petition. In Sumita Singh V/s Kumar Sanjay and Another³, though the unemployed husband stated that the wife is an educated woman and that she is doing very well and that she can travel to Ara, the Supreme Court held that the suit is of the husband against the wife and that it is the wife's convenience that must be looked at. In Sangeeta @ Shreya V/s Prasant Vijay Wargiya⁴, 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 the wife's petition for transfer of the case filed by the husband pending before the Court at Gwalior, M.P., to the Family Court at Kota, Rajasthan. Further in the case on hand in the absence of any special and distinguishing circumstances and justifying reasons in favour of the

¹ (2007) 15 SCC 667

² (2005) 12 SCC 237

³ (2001) 10 SCC 41

⁴ (2004) 13 SCC 407

husband, the convenience of the wife must prevail. The preponderance of precedential authority and the circumstances indicated are sufficient to allow the wife's petition. The point is answered accordingly.

7. In the result, the Tr.C.M.P is allowed and F.C.O.P. No.98 of 2016 is withdrawn from the file of the Family Court, Khammam, and is transferred to the file of the Family Court, Ranga Reddy District at L.B. Nagar, 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.

20th October, 2016
Vjl



M. SEETHARAMA MURTI, J