

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.315 of 2016

ORDER:

This Criminal Petition, under Section 407 Cr.P.C., is filed to withdraw D.V.C.No.20 of 2015 on the file of Judicial Magistrate of First Class (Prohibition and Excise), Kurnool and transfer to any competent Court at Vijayawada.

The petitioners seek transfer on two grounds. The first ground is that the petitioners apprehending danger to their life in the hands of the first respondent as they are receiving threats from her; and the second ground is that F.C.O.P.No.25 of 2014 is pending on the file of Judge, Family Court, Vijayawada, and, therefore, sought for withdrawal as stated supra.

So far as first objection of life threat is concerned, certainly, it is difficult for the petitioners to appear before the Court of Judicial Magistrate of First Class (Prohibition and Excise), Kurnool, in the event of life threat, and to have fair trial, it is appropriate to provide necessary police protection to the petitioners. In fact proceedings under the Act are purely civil in nature and appearance on each and every date of adjournment is unnecessary as held by this Court in **Giduthuri Kesari Kumar v. State of Telangana rep. By Public Prosecutor**¹. Hence, the learned Judicial Magistrate of First Class (Prohibition and Excise), Kurnool,

¹ 2015(2) ALD (CrI.) 470

is directed to provide necessary police protection to the petitioners whenever they attend Court in connection with D.V.C.No.20 of 2015 on receipt of requisition in writing from them subject to bearing expenses, if any.

The second ground is with regard to pendency of F.C.O.P.No.25 of 2014 on the file of Judge, Family Court, Vijayawada. In F.C.O.P.No.25 of 2014, the first respondent is not required to appear on each and every date of adjournment since it is purely civil in nature except on the occasions where her presence is necessary. Moreover, if D.V.C.No.20 of 2015 is transferred to the Judge, Family Court, Vijayawada, the first respondent will have to travel from Kurnool to Vijayawada i.e. more than 300 Kms. incurring heavy expenditure on each and every date of adjournment. Added to that, if Domestic Violence Case is decided by a Judicial Magistrate of First Class, the petitioners will have an opportunity to file an appeal before the District Court against the order under Section 29 of the Act, but if it is tried and decided by the District Court, the petitioners will lose the opportunity of filing appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005.

Taking all these facts, pendency of F.C.O.P.No.25 of 2014 before the Judge, Family Court, Vijayawada, cannot be a ground to withdraw D.V.C.No.20 of 2015 from the

Court of Judicial Magistrate of First Class (Prohibition and Excise), Kurnool.

Learned counsel for the petitioners requested to dispense with the appearance of the petitioners on each and every date of adjournment. Such power can be exercised by the learned Judicial Magistrate of First Class, Kurnool under Rule 37 of Criminal Rules of Practice or Section 205 Cr.P.C and as discussed above appearance on every date of adjournment is unnecessary and Court shall not insist appearance. Therefore, the petitioners are directed to file an appropriate application before the learned Judicial Magistrate of First Class (Prohibition and Excise), Kurnool where D.V.C.No.20 of 2015 is pending. On filing such application, and on issuing notice to the first respondent, the learned Judicial Magistrate of First Class (Prohibition and Excise), Kurnool, is directed to decide the application on the same day.

In view of my foregoing discussion, I find no ground to withdraw D.V.C.No.20 of 2015 from the Court of learned Judicial Magistrate of First Class (Prohibition and Excise), Kurnool and transfer the same to the Judge, Family Court, Vijayawada, where F.C.O.P.No.25 of 2014 is pending. However, learned Judicial Magistrate of First Class (Prohibition and Excise), Kurnool, is directed to provide necessary police protection to the petitioners and directed

to follow the guidelines laid down by this Court in **Giduthuri Kesari Kumar** (1 supra).

With the above observation, the Criminal Petition is disposed of at the admission stage.

Miscellaneous petitions pending, if any, shall stand dismissed.

M.SATYANARAYANA MURTHY,J

Date:14.12.2016
usd

