

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.154 of 2016

ORDER:

This Criminal Petition, under Section 407 of Code of Criminal Procedure, 1973, is filed to withdraw M.C.No.1 of 2016 from the file of Judicial Magistrate of First Class, Sompeta, Srikakulam District, and transfer the same to any other appropriate Court in Visakhapatnam District, on the first ground that F.C.O.P.No.1774 of 2015 filed under Section 9 of the Hindu Marriage Act, 1955, is pending before the Judge, Family Court, Visakhapatnam; and on the second ground that the petitioner is facing life threat whenever he is attending the Court at Sompeta.

The first ground regarding pendency of F.C.O.P.No.1774 of 2015 filed under Section 9 of the Hindu Marriage Act, 1955, before the Judge, Family Court, Visakhapatnam, is not a legally valid ground to withdraw M.C.No.1 of 2016 from the file of Judicial Magistrate of First Class, Sompeta, Srikakulam District and transfer the same to any other competent Court at Visakhapatnam, since in a family Court, the petitioner herein is not required to appear before the Court on each and every day of adjournment since the F.C.O.P. is purely civil in nature, but whereas the 1st respondent is residing at Sompeta and she has to appear before the Court on all the dates of adjournments, subject to exemption granted by the Magistrate dispensing with her appearance before the Court in Maintenance

Case, if withdrawn and transferred. Moreover, the 1st respondent, having filed a petition under Section 125 of Cr.P.C., contended that she has no means to maintain herself and that the petitioner refused to maintain her by paying maintenance for her livelihood. When it *prima facie* appears that the 1st respondent is not having means, she cannot be forced to appear before the Court at Visakhapatnam. Therefore, the pendency of F.C.O.P.No.1774 of 2015 before the Court at Visakhapatnam is not a ground to withdraw M.C.No.1 of 2016 from the file of Judicial Magistrate of First Class, Sompeta, Srikakulam District, and transfer the same to any competent Court at Visakhapatnam.

The second ground urged by the petitioner before this Court is that he is facing life threat in the hands of the respondents at Sompeta, Srikakulam District. M.C.No.1 of 2016 is filed before the Judicial Magistrate of First Class, Sompeta, Srikakulam District in the year 2016 and summons were issued by the Magistrate on 02.05.2016 fixing the date of hearing as 06.06.2016. But there is nothing on record to show that the petitioner appeared before the said Magistrate in connection with M.C.No.1 of 2016. Moreover, when the petitioner is facing life threat, there must be specific allegation supported by any document to prove the same. If really the petitioner is having life threat at Sompeta, Srikakulam District, he would have complained the same to the police concerned having jurisdiction over the area where the petitioner was threatened or at

least, to the Magistrate before whom M.C.No.1 of 2016 is pending. But no material is produced to substantiate the said contention that the petitioner is facing life threat. In the absence of any material, the feeble contention of the petitioner that he is facing life threat whenever he is attending the Court at Sompeta cannot be a ground to withdraw and transfer M.C.No.1 of 2016 from the file of Judicial Magistrate of First Class, Sompeta, Srikakulam District. On that ground alone, this Court cannot exercise jurisdiction under Section 407 of Cr.P.C. If really the petitioner is facing life threat at Sompeta, Srikakulam District, he is at liberty to make a complaint to the police concerned or to the Magistrate concerned in writing. In the event of making any such written complaint by the petitioner, I deem it appropriate to direct the Judicial Magistrate of First Class, Sompeta, Srikakulam District, to provide necessary protection to the petitioner whenever he attends the Court on the date of adjournment in connection with M.C.No.1 of 2016, subject to bearing expenses, if any.

Subject to the above directions, this Criminal Petition is dismissed at the stage of admission. Miscellaneous petitions, if any, pending in this petition, shall stand dismissed.

M. Satyanarayana Murthy, J

27th December, 2016
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