

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER CIVIL MISCELLANEOUS PETITION No.830 OF 2016

ORDER:

This transfer civil miscellaneous petition, under Section 24 of the Code of Civil Procedure, 1908 (for short 'CPC'), is filed to withdraw O.P. No.62 of 2015 pending on the file of the Senior Civil Judge, Jagtial, and transfer the same to the Judge, Family Court, Nizamabad, or to any other Court of competent jurisdiction outside Karimnagar District.

The petitioner filed the O.P. under Section 13 (1) (i-a) of Hindu Marriage Act, 1955. Initially, on an application filed by the respondent, it was withdrawn from the Court of Senior Civil Judge, Nizamabad, and transferred to the Court of Senior Civil Judge, Jagtial, with the consent of the petitioner herein.

Now the contention of the petitioner is that father of the respondent, who is an employee in the Police Department, threatening to foist a false case under the provisions of SCs/STs (POA) Act, in case the O.P. is not withdrawn and he is also facing life threat. Therefore, it is difficult for him to prosecute the proceedings without fear and requested this court to withdraw the O.P. pending on the file of Senior Civil Judge, and transfer the same to any other court outside the jurisdiction of Karimnagar District.

The petitioner, though made serious allegations against father of the respondent, who is now residing Australia, did not lodge any complaint either to the police or to the Presiding Officer of the court, atleast complaining threat he faced in the hands of father of the respondent. Except expressing apprehension of life threat in the hands of father of the respondent, no material is placed before this

court to withdraw the O.P. pending on the file of Senior Civil Judge, Jagtial, and transfer the same to any other court outside the jurisdiction of Karimnagar District. The Apex Court while dealing with scope of Section 24 of Code of Civil Procedure laid down guidelines in **Kulwinder Kaur alias Kulwinder Gurcharan Singh v. Kandi Friends Educational Trust and others**¹ the Apex Court laid down the following guidelines to exercise power under Section 24 of CPC:

- (i) **Balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;**
- (ii) **Convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;**
- (iii) **Issues raised by the parties;**
- (iv) **Reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;**
- (v) **Important questions of law involved or a considerable section of public interested in the litigation;**
- (vi) **“Interest of justice” demanding for transfer of case, etc.**

Similarly, when apprehension that the petitioner will not get justice in Court and held in **Usmangani Adambhai Vahora Vs. State of Gujarat and another**² the Apex Court considered the ground invented by parties that they would not get justice in the Court for seeking transfer of pending criminal case before one Court and transfer the same to other Court exercising power under Section 406 of the Code of Criminal Procedure and held that the law is one and the same for withdrawal and transfer based on apprehension that the party would not get justice in the Court and adverted to the principle

¹ AIR 2008 SC 1333

² S.L.P. (Criminal) Nos. 9374-9375 of 2015

laid down in **Kulwinder Kaur alias Kulwinder Gurcharan Singh Vs. Kandi Friends Educational Trust and others** (1 supra) wherein it was held that the law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.

Similarly, in **Abdul Nazar Madani Vs. State of Tamil Nadu**³, at paragraph 7, the Apex Court discussed the ground of apprehension that party will not get justice and concluded that apprehension of the party that he will not get fair justice is absolutely mercurial, cannot be said to be reasonable and denied the withdrawal and transfer of the matter pending on the file of one Court to other.

³ (2000) 6 SCC 204

In the instant case, the petitioner's apprehension is threat to his life and he will not get justice in the court in which the matter is pending.

So far as the threat is concerned, there is absolutely no iota of evidence to substantiate his contention except the allegation in paragraph 4 of the affidavit filed accompanying the petition. Merely because, father of the respondent is an employee in the Police Department, nothing prevented the petitioner to lodge a complaint against the conduct of father of the respondent to the higher authorities in the Police Department to take action against him or atleast to the Presiding Officer of the court.

In the absence of any material, it is difficult to accept the contention of the petitioner to withdraw the O.P. pending on the file of the Senior Civil Judge, Jagtial, and transfer the same to any other court outside the Karimnagar District. If really the petitioner is facing such life threat, nothing prevented him to give complaint to the Presiding Officer of the court.

The other ground the petitioner will not get fair justice in the court where the matter is pending.

In view of the law declared by the Apex Court in **Abdul Nazar Madani v. State of Tamil Nadu** (3 supra), the apprehension is not reasonable and it is artificial.

Once the O.P. was withdrawn from the court of the Senior Civil Judge, Nizamabad, and transferred to the court of the Senior Civil Judge, Jagtial, on an application in Tr.C.M.P.No.266 of 2015 filed by the respondent, with the consent of the petitioner herein, again the relief sought in the present petition cannot be granted, at the whims and fancies of any of the parties to the litigation, even if the grounds

urged in the petition would fall within the guidelines laid down by the Apex Court in **Kulwinder Kaur alias Kulwinder Gurcharan Singh Vs. Kandi Friends Educational Trust and others** (1 supra), thereby the petitioner is disentitled for the relief claimed in the petition.

However, the learned Senior Civil Judge, Jagtial, is requested not to insist for appearance of the petitioner on every date of adjournment, except on the dates when his presence is required for recording his cross-examination by the court or for any other specific purpose, as long as he is being represented by his counsel and prosecuting the proceedings.

The petitioner is at liberty to file an application before the Senior Civil Judge, Jagtial, to provide police protection. On receipt of such application, the Presiding Officer is requested to consider the same directing the police to provide police protection whenever the petitioner attends the court in connection with O.P. No.62 of 2015, subject to bearing expenses.

This direction would not preclude the Senior Civil Judge, Jagtial, to pass any order against the petitioner, in the event the counsel for the petitioner did not represent and prosecute the proceedings on his behalf.

In the result, the transfer civil miscellaneous petition is dismissed. No costs.

Miscellaneous petition, if any, pending in the transfer civil miscellaneous petition shall stand closed.

M.SATYANARAYANA MURTHY, J

20.07.2017

Note: Issue CC by 24.07.2017.

b/o.BV