

HON'BLE Dr. JUSTICE SHAMEEM AKTHER
TRANSFER CRIMINAL PETITION No.57 OF 2017

ORDER:

This Transfer Criminal Petition, under Section 407 of Cr.P.C., is filed by the petitioner seeking to withdraw the C.C. No.362 of 2014, pending on the file of the Court of XXI Metropolitan Magistrate, Cyberabad at Medchal, Ranga Reddy District (for short, 'the lower Court'), and transfer the same to any competent Court at Hyderabad.

Heard Sri Mohd.Islamuddin Ansari, learned counsel for the petitioner, learned Public Prosecutor appearing for the 1st respondent-State, and Sri M.Ram Mohan Reddy, learned counsel for the 2nd respondent, and perused the record.

Learned counsel for the petitioner would submit that the 2nd respondent fell in love with him, married him on 01.07.2012; thereafter, they left for Ethiopia, lived for some time and returned to India; 2nd respondent lodged a false complaint dated 11.05.2013 alleging dowry demand and harassment for which a case in Crime No.306 of 2013 for the offences under Sections 498-A, 420 and 506 I.P.C. and Sections 3 and 4 of Dowry Prohibition Act was registered against him and the concerned Police filed charge sheet against him in that crime, i.e., C.C. No.362 of 2014 before the lower Court, got arrested him in the Criminal Case and released him on bail. It is alleged that the petitioner was misled by Public Prosecutor with regard to his relaxation of bail conditions; the staff of the trial Court is not co-operating with him and submitted that there is no hope of conducting fair and impartial trial in C.C. No.362 of 2014 at the lower Court. He further submitted that the Police did not conduct fair investigation in the case and filed charge sheet with antedates. As he was

running short of money, he filed application in the lower Court for release of his passport and argued his case in person and also sought police protection, which was pending before the lower Court. The petition filed by the petitioner for restitution of conjugal rights was decreed in his favour. Moreover, in the charge sheet filed before the lower Court there is no mention of seizure of his passport, he obtained information under the Right to Information Act, where the Police stated that his passport was deposited in the lower Court. The petitioner filed petition under Section 239 of Cr.P.C. seeking discharge and the lower Court returned the same with an endorsement that the application is required to be filed through an Advocate; thereafter, the petitioner obtained no objection from his previous counsel, but was not allowed to speak in the lower Court and was harassed by 2nd respondent and his family members and ultimately prayed to withdraw C.C. No.362 of 2014 from lower Court and transfer the same to any competent Court at Hyderabad.

On the other hand learned Public Prosecutor and Sri M.Ram Mohan Reddy, appearing for the respective respondents denied any alleged harassment and contended that the Transfer Application is filed on false grounds and the same is liable to be dismissed.

In view of the rival submissions, the point for determination is whether C.C. No.362 of 2014 is liable to be withdrawn and transferred to any Court at Hyderabad as alleged by the petitioner?

POINT: the petitioner seems to have alleged that he was not given opportunity to present his case in person. The application to return his passport was not considered by the learned Magistrate. The Court staff is not co-operating with him. He is running short of money, the conditions imposed in the bail application were not relaxed even after filing of charge

sheet and made some other allegations in the instant petition. Under these circumstances it is appropriate to abstract the provisions of Section 407 of Cr.P.C., which reads as follows:

“407. Power of High Court to transfer cases and appeals- (1)

Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice.

.....”

A perusal of the above provision, enunciates the following norms:

- 1) The jurisdiction under the present section arises in the interests of justice only;
- 2) In cases, where all essential attributes of a fair and impartial trial are put in jeopardy;
- 3) Where there was every likelihood of physical harm being caused to the petitioner.

However no hard and fast rule can be prescribed for deciding a Transfer Application, the alleged non-co-operation of the staff members cannot be a ground. Moreover, there is no need for the petitioner to approach staff members; if any application filed by him is not processed, he can bring it to the notice of the Presiding Officer concerned and seek appropriate remedy.

The main grievance of the petitioner is that his passport is not returned. As per the charge sheet, his passport was not seized and deposited in the lower Court. The petitioner did not place any material on record to show that his passport was seized in the course of investigation in the criminal case registered against him. If his passport is with the Station House Officer, he can make an application before the authority having power to deal with the same. He cannot seek transfer of a case on this ground. The petitioner failed to establish that he would not get fair and impartial trial or there are any extraneous considerations to defeat the ends of justice. Simply by making some bald and untenable allegations, the petitioner cannot seek transfer of his case to any other Court in Hyderabad. All the contentions made on behalf of the petitioner are without any substance; do not merit consideration, liable to be dismissed. The point is accordingly answered.

In the result, the Transfer Criminal Petition is dismissed.

As a sequel, miscellaneous petitions, if any, pending in this Transfer Criminal Petition shall also stand dismissed.

Dr. SHAMEEM AKTHER, J

Date: 23-10-2017.
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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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