

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr.C.M.P.No.459 of 2017

ORDER

This petition under Section 24 of CPC is filed by petitioner-wife to withdraw HMOP No.53 of 2017 pending on the file of the Judge, Family Court, Vijayawada, and transfer the same to any competent Court at Anakapalle, on the ground that the petitioner is staying with her mother at Anakapalle and is unable to meet the expenses of travelling, boarding and lodging to attend the Court at Vijayawada and she has no male assistant to perform journey covering distance more than 400 kms on every date of adjournment along with two children. The other ground urged by petitioner is that when she appeared before the Court in the aforesaid case, the respondent and his mother attempted to remove the children from her custody forcibly and then she reported the matter to the police and after counselling, the police restored the custody of children and they also threatened the petitioner to withdraw the cases filed against the respondent and thereby, it is difficult for her to prosecute the case before the Judge, Family Court, Vijayawada.

2. The first and foremost contention of petitioner is that she is staying with her mother at Anakapalle and she has no male assistant to perform journey covering distance more than 400 kms. Undisputedly, it is difficult task for a woman to undertake journey to appear before the Judge, Family Court, Vijayawada, on every date of adjournment. Her appearance can be dispensed with by passing

appropriate order. Insofar as lack of means to meet the expenses of travelling, boarding and lodging is concerned, the respondent can be directed to deposit the costs for travelling, boarding and lodging in terms of Order XXV CPC. Therefore, these grounds are not sufficient to withdraw and transfer the pending petition.

3. Though a specific contention is raised by petitioner before this Court that the respondent and his mother are threatening her to withdraw the case in Cr.No.20 of 2016 registered for the offences punishable under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act on the file of Women Police Station, Anakapalli, against the respondent and his mother and M.C.No.2 of 2012 on the file of V Metropolitan Magistrate at Anakapalle, filed for maintenance, there is absolutely no material produced by petitioner to establish that she is facing threat in the hands of the respondent. If really she is facing any threat, she can report the same to the police having jurisdiction or at least to the Presiding Officer of the Court so as to provide police protection whenever she attends the Court. Therefore, taking into consideration of facts and circumstances of the case, the alleged threat is not based on any material and the same would not form a ground for withdrawal and transfer of the case. Further, pendency of a crime and maintenance case is not a ground to withdraw and transfer the case as they cannot be tried together along with HMOP.

4. Taking into consideration the difficulty of petitioner being a woman to perform journey and unable to meet the expenses of

traveling, boarding and lodging, I deem it appropriate to direct the Judge, Family Court, Vijayawada, not to insist the appearance of petitioner on every date of adjournment, except on the dates when her presence is required for recording her cross-examination as long as she is represented by her counsel and prosecuting the case on her behalf or on any other day when her presence is required for any specific purpose subject to compliance of Order XXV of CPC. This direction does not preclude the Judge, Family Court, Vijayawada, to pass any order in accordance with law, in the event, she is not represented by her counsel and prosecuting the case. The Judge, Family Court, Vijayawada, is also directed to provide police protection to the petitioner on a petition, if any, filed by her subject to depositing the costs by the parties.

5. With the above direction, the Transfer Civil Miscellaneous Petition is disposed of. No order as to costs. Miscellaneous petitioners, if any, pending in the petition shall stand closed.

M. SATYANARAYANA MURTHY, J

21st July, 2017
sj