

The Hon'ble Dr. Justice Shameem Akther

Tr.Crl.P.Nos.164, 165 and 166 of 2017

Common Order:

Since the parties are common in all these three Transfer Criminal Petitions and the relief sought therein is similar, they are being disposed of together with the consent of the learned Counsel for both parties.

Transfer Crl.P.No.164 of 2017 is filed by petitioners/accused Nos.1, 2 and 3 in CC.No.196 of 2016 seeking to withdraw the said CC from the file of the II Additional Junior Civil Judge, Tenali –cum- II Additional Judicial First Class Magistrate, Tenali, and to transfer the same to any competent Court in Chirala, Prakasam District.

Transfer Crl.P.No.165 of 2017 is filed by the petitioner/respondent in M.C.No.58 of 2015 on the file of the II Additional Junior Civil Judge, Tenali, to transfer the said MC to any competent Court in Chirala, Prakasam District.

Transfer Crl.P.No.166 of 2017 is filed by the petitioners/respondents in DVC.No.3 of 2016 on the file of

the II Additional Junior Civil Judge, Tenali, seeking transfer of the said case to any competent Court in Chirala, Prakasam District.

For convenience, the parties shall be referred to as they are arrayed in Transfer Crl.P.No.166 of 2017.

The facts, in brief, of all the three cases are that the petitioner Nos.2 and 3 are the parents of petitioner No.1, who is the husband of the unofficial respondent No.2; that their marriage was performed on 07-12-2014 at Tirumala Tirupathi Devasthanam, Tirumala; that after three months of their marital life, on 04-03-2015, respondent No.2 left the house of petitioner No.1 and thereafter, refused to join his Company; that petitioner No.1 filed HMOP.No.39 of 2015 under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act'), on the file of the Senior Civil Judge, Parchur, for restitution of conjugal rights, which was allowed on 27-11-2015; that instead of joining the company of petitioner No.1, respondent No.2 filed DVC No.3 of 2016 on the file of the II Additional Junior Civil Judge, Tenali, against the petitioners; and that respondent No.2 has also filed a report before the Vemuru Police Station on 16-01-2016, which was

registered as Crime No.2 of 2016 for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. Aggrieved thereby and seeking to quash the said case, the petitioners filed Criminal Petition No.4195 of 2016 before this Court and this Court disposed of the same by directing the Police concerned to complete the investigation without arresting the petitioners. As respondent No.2 did not join his company despite several mediations, she filed Crime No.2 of 2016 against the petitioner Nos.1 and 2 and thereafter petitioner No.1 filed HMOP.No.17 of 2016 before the Court of the Senior Civil Judge at Parchur, Prakasam District, under Section 13 (1)(i-a)(i-b) of the Act for dissolution of the marriage between himself and respondent No.2. Respondent No.2 filed Transfer CMP No.476 of 2016 before this Court seeking transfer of the said HMOP to the Court of the Principal Senior Civil Judge, Tenali of Guntur District, which was allowed and the HMOP was transferred accordingly and renumbered as HMOP.No.11 of 2017.

It is the case of the petitioners that on 27-06-2017, they attended the Court of the II Additional Junior Civil Judge,

Tenali, in connection with MC.No.58 of 2015 and DVC.No.3 of 2016 and after adjournment of the cases, returned to Karamchedu. But later, they were informed by their Counsel- Mr.Raghavaiah that respondent No.2 through her mother filed a report against petitioner Nos.1 and 3 before the I Town Police Station, Tenali, which was registered as Crime No.90 of 2017 for the offences punishable under Sections 323, 354B and 501 r/w 34 IPC, alleging that on the said date, when respondent No.2 along with her parents was going to the office of the Mahila Mandali, Kothapeta, and reached the office of their Counsel- Mr.Raghaviah, petitioner Nos.1 and 3 assaulted the mother of respondent No.2 by holding her hair and abused her in filthy language, no such incident had, in fact, taken place. The proceedings in the said Crime were stayed by this Court *vide* Order, dated 27.07.2017, in Crl.M.P.No.6456 of 2017 in Crl.P.No.6292 of 2017 by this Court.

The learned Counsel for the petitioners would submit that by filing false and frivolous Criminal Cases with baseless allegations, respondent No.2 is denying his clients an opportunity to defend their cases pending before the Courts

at Tenali, Guntur District. Hence, they request to transfer all the three cases *i.e.*, MC.No.58 of 2015, DVC.No.3 of 2016 and CC.No.196 of 2016 to the competent Courts at Chirala, Prakasam District, and to provide them a fair opportunity for participation in trial to defend the same.

The learned Counsel for the petitioners would further submit that the petitioners are non-locals and they apprehend that respondent No.2 and her parents being the natives and also influenced persons at Tenali would directly or indirectly create hardship to them in defending their cases pending in the Courts at Tenali or at any other place.

The learned Counsel for the petitioners would ultimately submit that the petitioners are ready to pay the expenses to respondent No.2 in the event of the aforesaid three cases being transferred to any other competent Court at Chirala, Prakasam District or at any other place.

Per contra, the learned Counsel for respondent No.2 would submit that no false cases, as contended by the petitioners herein, have been registered against the petitioners; that in view of the assault and abuse made by

petitioners, the mother of respondent No.2 has lodged a complaint; and that there is no truth in the allegations and the averments made against respondent No.2. The learned Counsel has denied the contentions raised by the petitioners in the respective Transfer Criminal Petitions for transfer of the cases.

As per the records placed before this Court, on a report lodged by the mother of respondent No.2, on 27.06.2017, a case in Crime No.90 of 2017 was registered against petitioner Nos.1 and 3 by I Town Police Station, Tenali, alleging that they have abused and assaulted her and the investigation is pending. The parents of respondent No.2 are natives of Tenali. The relations between both the parties to the litigation are strained. Fair trial is a *sine qua non* of fundamental right available to the parties to the litigation under Article 21 of the Constitution of India. The valuable right of the parties to have a fair opportunity to defend/contest their cases and seek redressal in accordance with the procedure prescribed under law cannot be denied. Though the pendency of cases at Tenali is convenient to

respondent No.2, the petitioners' apprehension that they will be denied the opportunity of fair trial cannot be discarded.

The Court is the most trusted and sacred institution. This Court has an obligation to keep the trust and confidence alive. This Court has to ensure fair trial/enquiry to both the parties. Having regard to the averments made in the Transfer Criminal Petitions and also filing of Criminal Case against petitioner Nos.1 and 2, which is pending investigation, the request of the petitioners to transfer the cases to Chirala, Prakasam District, cannot be acceded to as it is the place of petitioners herein. The cases may be transferred to the Courts near the place of residence of respondent No.2.

In view of the assurance given by the learned Counsel for the petitioners that petitioner No.1 is ready to pay the expenses to respondent No.2 in the event of transfer of cases to any Court, the distance between Tenali and Guntur is around 30 kms, so the above cases can be transferred to competent Courts, situated at Guntur, Guntur District to meet the ends of justice, subject to petitioner No.1 paying travel expenses etc., to respondent No.2 at the rate of Rs.200/- per appearance at Guntur in respect of above cases.

In the result, (i) DVC No.3 of 2016 is withdrawn from file of the II Additional Junior Civil Judge, Tenali, and transferred to the Court of the Principal Junior Civil Judge, Guntur; and (ii) MC.No.58 of 2015 and CC.No.196 of 2016 are also withdrawn from the file of the II Additional Judicial First Class Magistrate, Tenali, and transferred to the Court of the II Additional Judicial First Class Magistrate, Guntur, subject to petitioner No.1 filing an undertaking in the above cases within 15 days from the date of this order to pay Rs.200/- to respondent No.2, his wife, per appearance, in Guntur; failing to file such an undertaking in all three cases, within the time stipulated, this common order stands revoked. It is made clear even two or more cases are posted on a day in Guntur Courts, as per this order, the petitioner No.1 is required to pay only Rs.200/- not more to the respondent No.2.

All these three Transfer Criminal Petitions are allowed accordingly.

As a sequel, Miscellaneous Petitions, pending if any, shall stand closed.

(Dr.Shameem Akther, J)

Dated: 07-11-2017
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