

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P. NO.26 OF 2017

ORDER:

This petition is filed under Section 24 of Civil Procedure Code to withdraw M.V.O.P No.137 of 2016 on the file of Principal Judge, Family Court, Ananthapuram and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar, on two grounds.

The first ground is that the petitioner being a woman, is unable to perform journey covering distance of more than 300 kms to appear before the Family court, Anantapuram on every date of adjournment. The second ground is that, she lodged a complaint with Women Police Station, Saroornagar and the same was registered as Crime No.158 of 2016 for the offences punishable under Sections 498(A), 406, 506 IPC and Sections 3 & 4 of Dowry Prohibition Act. After completion of investigation, the police filed charge sheet based on the final report and now it is pending as C.C.No.439 of 2016 on the file of XIV Metropolitan Magistrate at L.B. Nagar, Hyderabad. The petitioner also filed D.V.C.No.37 of 2016 pending on the file of VII Metropolitan Magistrate, Hayathnagar and the respondent appeared before the Court on relevant dates in connection with the above two cases. Therefore, the petitioner requested to withdraw and transfer F.C.O.P.No.137 of 2016 pending on the file of Principal Judge, Family Court, Ananthapuram and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar.

The respondent filed counter denying material allegations, *inter alia*, contending that the petitioner filed these two petitions as

an after thought after filing F.C.O.P.No.137 of 2016 before the Principal Judge, Family Court, Ananthapuram, by the respondent herein under Section 9 of the Hindu Marriage Act. That apart, the petitioner herein is an employee working in Q.A.Optimus Drugs Private Limited company in Hyderabad, earning salary of Rs.30,000/- per month. Therefore, it is averred in the counter that none of the grounds raised by the petitioner are sufficient to withdraw and transfer F.C.O.P.No.137 of 2016 pending on the file of Principal Judge, Family Court, Ananthapuram and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar by exercising power under Section 24 of Hindu Marriage Act and prayed to dismiss the petition.

Undisputedly, the marriage of the petitioner and respondent was performed on 01.11.2015. The respondent filed a petition for restitution of conjugal rights pending on the file of Judge, Family Court, Ananthapuram and the petitioner is required to appear before the concerned Court on every date of adjournment by travelling a distance of more than 300 kms from Hyderabad.

Though, the matter is purely civil in nature, taking into consideration of the difficulty expressed by the petitioner, instead of withdrawing F.C.O.P.No.137 of 2016 pending on the file of Judge, Family Court, Ananthapuram and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar, I deem it appropriate to direct the Judge, Family Court, Ananthapuram not to insist appearance of the petitioner before the Court further, which would serve the purpose.

In **Krishna Veni Nagam v. Harish Nagam**¹, the Supreme Court in paragraph 18 of the judgment laid down certain guidelines in the matrimonial cases for withdrawal and transfer, which are as follows:

“18. We, therefore, direct that in matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:-

- i) Availability of video conferencing facility.
- ii) Availability of legal aid service.
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.
- iv) E-mail address/phone number, if any, at which litigant from out station may communicate.”

The guidelines issued by the Supreme Court in **Krishna Veni Nagam**⁹ case, indicates that the parties can be examined by video conferencing or in case, the wife is facing any financial problem to attend the Court, the other spouse may be directed to deposit travelling expenses, boarding and lodging expenses and furnish the address particulars and phone number to the District Judge, where within he/she is residing. Therefore, the appearance of the petitioner is not imperative on all dates of adjournments, except on the dates when the petitioner is to be examined as a witness before the Court, in the event no facility of video conference is available. In view of the guidelines laid down by the Apex Court in **Krishna Veni Nagam**⁹ case, the matrimonial matters cannot be withdrawn on the ground of inconvenience.

¹ JT 2017 (3) SC 190

Here, the difficulty expressed by the petitioner is that, she cannot perform journey covering distance of more than 300 kms from Hyderabad to Ananthapuram. But, the peititoner is required to appear before the Family Court, Ananthapuram for recording her cross-examination or for any other purpose or whenever the Family Court directs her for specific purpose. Therefore, inability to perform journey is not a ground to withdraw M.V.O.P No.137 of 2016 on the file of Principal Judge, Family Court, Ananthapuram and transfer the same to the Family Court, Ranga Reddy District at L.B. Nagar.

The second ground urged before this Court is pendency of C.C.No.439 of 2016 and D.V.C.No.37 of 2016. These two cases are being tried by XIV Metropolitan Magistrate at L.B. Nagar, Hyderabad and VII Metropolitan Magistrate, Hayathnagar respectively and they cannot be clubbed with F.C.O.P.No.137 of 2016, since the said F.C.O.P.No.137 of 2016 is being tried by Family Court, Ananthapuram, which is competent to try such dispute. Merely because C.C.No.439 of 2016 and D.V.C.No.37 of 2016 being tried by XIV Metropolitan Magistrate at L.B. Nagar, Hyderabad and VII Metropolitan Magistrate, Hayathnagar are pending at Hyderabad, the respondent is appearing in both the cases.

Hence, taking into consideration all the facts of the case, including the inability of the petitioner to perform journey to appear before the Family Court, Ananthapuram, I deem it appropriate to direct the Judge, Family Court, Ananthapuram not to insist the appearance of the petitioner on every date of adjournment, as long as she is represented by a counsel and she is

prosecuting the case, except on the dates when her appearance is required for cross-examination or for any specific purpose for whenever she is directed to appear before the Court. This order does not preclude the Judge, Family Court, Ananthapuram to pass any order in accordance with law, in the event of the petitioner's counsel did not represent and prosecute the case on her behalf.

With the above observation, the transfer civil miscellaneous petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:20.07.2017

SP

