

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Tr.C.M.P.No.618 of 2016

ORDER:

This is a wife's application under Section 24 of the Code of Civil procedure, 1908, requesting to withdraw H.M.O.P No.23 of 2016 on the file of the Senior Civil Judge Court, Rayachoti, Kadapa District, and transfer the same to the file of the Family Court, Tirupati, for trial and disposal in accordance with the procedure established by law.

2. I have heard the submissions of *Sri C.Prakash*, learned counsel for the petitioner-wife, and of *Sri T.V.S Kumar*, learned counsel for the respondent-husband. I have perused the material record.

3. The case of the wife, in brief, is as follows:

“The marriage of the petitioner with the respondent was solemnized on 23.04.2015 at Umeshchandra Kalayana Mandapam, Kadapa city, YSR District as per Hindu Rites and Customs in the presence of elders of both the sides, relatives and friends, without giving any dowry and without giving any gold and other articles. Kandagadda Chalapathi and Murali acted as mediators for the marriage. At the time of engagement on 25.03.2015, i.e., before the marriage, the petitioner's parents paid Rs.5,00,000/- and gave 30 savars of gold, half kilo of silver articles to the respondent, in front of the aforesaid mediators. After the marriage, the petitioner along with her husband went to the house of her mother-in-law at Veeraballi. The petitioner lead marital life for just 15 days. Thereafter, the -in-laws of the petitioner harassed her to bring more money. The respondent is a doctor and was intending to go for higher studies/ PG course. He demanded an amount of Rs.5,00,000/- for his said course. He took away the cell phone from the petitioner stating that she should not talk to her parents and harassed her both mentally and physically; and also abused her by saying whether she had any affairs with her boy friends before marriage. The

petitioner who was three months pregnant by then went to Tirupati for UPSC examination and stayed at the house of the sister of her mother-in-law. At that time also, the petitioner was brought to her in-laws' house and was beaten. The respondent said that if the petitioner gives birth to a baby girl, she would be killed. On 27.09.2015 at 7.00 PM, when the respondent was in the house, her in-laws necked her out of the house. At that time, the petitioner went to the house of her grandfather, Veeraiah. One day thereafter, the petitioner was brought to her in-laws house along with elders, viz., Ramaiah, Krishnamurthy and Purushotham; and, after discussing with the elders of the petitioner's village, the petitioner was sent to Tirupati. The respondent and his parents came to the house of the petitioner and threatened the petitioner and her parents stating that the petitioner should not come to her in-laws' house without bringing money. In the said circumstances, on 04.04.2016, the petitioner gave a complaint to the Women Police Station, Tirupathi, against the respondent and her in-laws. The officials of the Women Police Station gave counseling to the petitioner and the respondent. But, there was no change in the attitude of the respondent. Yet again, the petitioner made a complaint before the Women Police Station, Tirupathi, and a case was registered vide FIR No.25 of 2016 and the said case is pending. While so, the respondent filed a petition under Section 13(1)(b) of the Hindu Marriage Act, 1955, on the file of the Senior Civil Court, Rayachoti, Kadapa District, seeking divorce. The petitioner is having under her care and custody, eight month old baby girl and hence, she is unable to travel from Tirupati to Rayachoti of Kadapa District and appear before the Senior Civil Court at that place. The petitioner has no sources of income and she is wholly depending upon her parents; and hence, she is not in a position to meet the travel and other expenses and under take travel from Tirupati to Rayachoti. On account of the criminal complaint lodged, there is also a life threat to the petitioner at the hands of the respondent. The parents of the petitioner are heavily indebted as they had

paid huge amounts to the respondent. They are paying interests due on the said debts. Hence, the petitioner is seeking transfer of H.M.O.P.23 of 2016 pending on the file of the Senior Civil Court, Rayachoti, Kadapa District, to the Family Court, Tirupati.”

4. The case of the respondent, in brief, is as follows:

The marriage of the parties was solemnized on 23.04.2015 at Umesh Chandra Kalyana Mandapam, Kadapa, as per Hindu rites and customs. Both the parties are doctors. All the allegations made by the petitioner are created and concocted for the purpose of the case and are totally false. The petitioner's complaint, filed on 20.07.2016, was registered vide FIR No.25 of 2016; in the said crime, the respondent was granted anticipatory bail; and his parents obtained station bail. From the date of the marriage, the behavior of the petitioner was absolutely uncommon. Her father used to blame and abuse the respondent for no fault of him. Unable to bear the same, the respondent attempted to commit suicide. The parties lived together only for four months and thereafter, for no reason, the petitioner left the company of the respondent. The respondent and his family members never made any demands for dowry; there is no question of demand for additional dowry. On the other hand, the petitioner is very greedy. This respondent suffered a lot at the hands of the petitioner. On 17.02.2016, the respondent got issued a legal notice; and the same was received by the petitioner, on 19.02.2016. However, no reply was given. Having no other option, the respondent filed H.M.O.P.No.23 of 2016 under Section 13(1)(b) of the Hindu Marriage Act, 1955, on the file of the Court of the Senior Civil Judge, Rayachoty, seeking divorce. The petitioner suppressed all the facts and the filing of the said petition and thereafter, on the advice of her father, she gave a complaint for the offences punishable under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. The petitioner and her family members are politically and financially very

influential in Tirupati. The respondent suffered hell at their hands. The petitioner is a well educated and is holding passport and she is capable of traveling to any other country. Though an Indian, she has no respect for the Indian Judicial system. There is absolutely no reason to seek transfer of the present OP. Hence, the petition may be dismissed.”

5. The learned counsel for the parties reiterated the respective contentions of the parties.

6. It is also profitable to first refer to the following decisions:

In *Gayatri Mohapatra v. Ashit Kumar Panda* (2003)11 SCC 731, the Supreme Court noted that the wife is a Director in a Company run by her mother and that she is used to travelling from place to place and observed that her incapacity to travel cannot be permitted to be stated as a ground to seek transfer of the husband's case.

In *Teena Chhabra v. Manish Chhabra* (2004) 13 SCC 411, the Supreme Court accepted the husband's offer to bear the expenses for the travel, boarding and lodging of the wife and dismissed her transfer petition filed on the ground that she had no source of income to travel.

In *M. Sivagami v. R. Raja* (2005) 12 SCC 301, the Supreme Court disallowed the wife's transfer application by directing the husband to pay her litigation costs and also her expenses and those of her witnesses.

In *Kanagalakshmi v. A. Venkatesan* (2004) 13 SCC 405, the Supreme Court accepted the plea of the husband that he would bear the expenses, not only of the wife but also of her companion, for travel and stay at the place where the case was pending, and accordingly dismissed the wife's transfer petition. The same principle was reiterated in *Priyanka Batra v. Manish Batra* (2005) 12 SCC 236; *Kakali Pal v. Balai Chandra Pal* (2005) 12 SCC 216; *Anuradha Dutta v. Subash Chandra Dutta* (2004) 13 SCC 694; *Sarita Singh Alias Babli Baghel v. A.P. Baghel* (2005) 12 SCC 376; *Kamudi Aurora v. Surinder Pal Singh Aurora* (2004) 13 SCC 634; and *Gargi Konar v. Jagjeet Singh* (2005) 11 SCC 446.

In *Preeti Sharma v. Manjit Sharma* (2005) 11 SCC 535, the Supreme Court observed that merely because the petitioner was a lady it did not mean that she could not travel to another place and that, at the highest, she could be paid expenses for her travel and stay.

In *Premlata Singh and Ors. v. Rita Singh* (2005) 12 SCC 277, the Supreme Court directed the transfer of the case taking into consideration the fact that the wife was undergoing treatment for kidney failure.

In *Usha George v. Koshy George* (2000)10SCC95, the Supreme Court held that it was not proper to transfer the case to any other Court as a number of hearings had already taken place in the Court where the case was already pending.

In *Neelam Bhatia v. Satbir Singh Bhatia* (2004) 13 SCC 436, the Supreme Court taking note of the fact that the case had progressed to the stage of trial disallowed the wife's transfer application, directing the husband to bear the travel and incidental expenses of the wife and her companion.

In *Anindita Das v. Srijit Das* (2006) 9 SCC 197, the Supreme Court found that leniency to ladies shown by the Court in transfer matters was being often misused and taken advantage of by women. The Supreme Court also observed that each petition is to be considered on its merit. On the facts of that case, the Supreme Court first noted that the grandparents were available to look after the six year old child and then taken note of the husband's offer to bear the expenses for the wife's and her companion's travel, and dismissed the wife's transfer application.

In *Euri Raji Reddy and Ors. v. State of Delhi and Anr.* 2004CriLJ2555, the Supreme Court found that as the wife had a house in Andhra Pradesh and her parents were living there it would be proper to transfer the cases filed by her at Delhi to a Court in Andhra Pradesh as sought for by her husband.

In *Meenakshi v. Mukesh Kumar* (2004) 13 SCC 497, the Supreme Court accepted the statement made by the husband with regard to the safety and security of the wife and that he would bear her conveyance charges and disallowed the wife's transfer application.

In *Lalita v. Kulwinder Kumar* (2007) 15 SCC 667, the Supreme Court having not accepted the offer of the husband to pay all expenses for his wife's travel, ordered transfer of the husband's case from the Court at Ghaziabad to the Court at Ludhiana by allowing the wife's petition filed on the grounds that she is having school going children, who cannot be left behind alone, and that she is suffering from certain ailment which required surgery and that she is not in a position to bear litigation and travel expenses.

In the decision in *Rajani Kishor Pardeshi v. Kishor Babulal Pardeshi* (2005) 12 SCC 237, despite an offer made by the husband to pay the expenses for his wife's travel to Mumbai, the Supreme Court held that the convenience of the wife is to be preferred over the convenience of the husband and allowed the wife's petition.

In *Sumita Singh v. Kumar Sanjay and Another* (2001) 10 SCC 41, though the unemployed husband stated that the wife is an educated woman and that she is doing very well and that she can travel to Ara, the Supreme Court held that the suit is of the husband against the wife and that it is the wife's convenience that must be looked at.

In *Amandeep Goyal v. Yogesh Rani* (AIR 2016 SC 4843) looking at the peculiar facts more particularly the fact that the husband is taking care of the child who is nine years old and is suffering from malignant disease, the Supreme Court has set aside the order of the High Court and transferred the case from the Court of Additional District Judge, Bathinda, to the Court of the District Judge, Sangur, with liberty to the Judge of the said Court to either hear the case or assign the same to any other Court of competent jurisdiction.

In *Priyanka Parashar v. Jitendra Kumar Thakur* (unreported) (MANU/ SCOR/ 29938/ 2016) the Supreme Court having noted that there are no grounds dismissed the transfer petition of the wife where by she sought transfer of the FCOP 917 of 2016 from the Family Court, Cyberabad, Ranga Reddy District, Telengana, to Family Court, Patna, Bihar. Thus, it is a case seeking transfer of a OP from a Court in one State to a Court in another State.

In *Sangeeta @ Shreya v. Prasant Vijay Wargiya* (2004) 13 SCC 407, when the husband claimed that he has no income and that he apprehends threats to life and liberty if he is made to go Kota, Rajasthan, the place of residence of his wife, the Supreme Court observed that we are still living in a civilized society and hence there is no substance in the submission of the husband that there would be danger to his life if he has to attend the Court at Kota and further held that if any threat is given, the husband can always complain to that Court and that such complaint, if any, will be considered by that Court on its merit and accordingly allowed the wife's petition for transfer of the case filed by the husband pending before the Court at Gwalior, M.P., to the Family Court at Kota, Rajasthan.

In the Judgment of the Supreme Court in *Kulwinder Kaur v. Kandi Friends Education Trust* AIR 2008 SC 1333, while dealing with the power of the Court to transfer suits, appeals or other proceedings under Sections 24 and 25 of the Code, the Supreme Court held as under:

“Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of

the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; 'interest of justice' demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a 'fair trial' in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order."

From a synopsis of the afore-stated Judgments, it is clear that there is no rule of thumb that can be uniformly applied in cases of this nature. Each case would ultimately turn on its own peculiar facts and circumstances and must be dealt with accordingly.

7. In fact the contentions of the parties are sated supra, in detail. This Court has to now consider the relevant contentions of the parties sans serious allegations traded by the parties as while making an order in a petition of this nature this Court will not enter into the merits of the main matter and record any findings which will have a bearing on the issues involved in the main matter. After disputes and estrangement between the parties, the respondent/ husband filed H.M.O.P.No.23 of 2016 in the Court of the learned Additional Senior Civil Judge, Rayachoti, Kadapa District, for dissolution of the marriage and for grant of a decree of divorce. Thereafter, the petitioner/ wife lodged with Women Police Station, Tirupathi, a criminal complaint against the respondent/ husband and a case in Crime (FIR) No.25 of 2016 of for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. The husband was granted anticipatory bail and his parents were granted bail by the police concerned. Be that as it may.

8. The point for consideration is – 'Whether or not the request of the petitioner/ wife for transfer of husband's H.M.O.P.No.23 of 2016 from the Court

of the learned Senior Civil Judge, Rayachoti, Kadapa District, to the Family Court, Tirupati, Chittoor District can be considered duly taking into consideration the grounds raised by the parties in their respective pleadings?

9. POINT:

9.1 The case of the wife as stated before this Court shorn of unnecessary details is as follows: After separation between the spouses, she is staying at Tirupati, along with her father. She is aged about 26 years. She is a graduate in medicine. She has no sources of income and she is dependant upon her father. Her father is not in a position to accompany her while traveling from her place to Rayachoti. She is taking care of the female child in her custody now aged about one year. She has financial weakness, incapacity and inability to undertake travel that too all alone from Tirupati to the Court at Rayachoti of Kadapa District on the date of each and every adjournment of the case. The husband has no difficulties or obligations as those being faced by her. On account of the criminal complaint lodged, there is also a life threat to the petitioner at the hands of the respondent.

9.2 The case of the husband as stated before this Court sans unnecessary details is as follows: He is a Doctor by profession. They led marital life only for four months. Thereafter, the petitioner left his company for no reason. The petitioner is a well educated and is holding passport and she is capable of traveling to any other country. Further, the distance between Rayachoti, Kadapa District and Tirupati is only 100 KMs. On false allegations, which are concocted for the purpose of transfer, the petitioner is indirectly seeking to oust the jurisdiction of the Senior Civil Judge Court. The Supreme Court dismissed a transfer petition filed by a wife on similar grounds. There are no grounds to allow the request of the petitioner. The petitioner and her family members are politically and financially very influential in Tirupati. There is also a life threat to the respondent at the hands of the petitioner and her

family members. The petition is filed only to harass the respondent and his family to come to her terms. Hence, the petition may be dismissed.

9.3 The wife specifically pleads financial incapacity and physical inability to undertake travel from Tirupati to Rayachoti. In the Indian context an earning male person is certainly better placed as he can undertake travel all alone safely at all times (day or night) when compared to a non-earning female or a house wife. If necessary, he can spend a night at a place where he has no relatives or friends to stay with. The same cannot equally be said of a house wife. The husband in his counter did not make an offer to bear the litigation, travel and incidental expenses of his wife and a companion, who may accompany her to Rayachoti, though at the hearing such an offer was made by the learned counsel on behalf of the husband. Though both the parties voiced apprehensions with regard to their safety in case they are required to go to the place of the other spouse, such allegations and counter allegations are not uncommon in matters of this nature and as observed by the Supreme Court in *Sangeeta @ Shreya's case* (supra), any threat to him/her can always be reported to the Court concerned for necessary further action and such unsubstantiated allegations cannot be a decisive factor in this adjudication. Therefore, the contention of the respondent that he has a life threat at Tirupati does not merit consideration. The further contention of the husband that after he filed the OP, the wife lodged a false police complaint as a counter blast cannot be countenanced in view of the submission on behalf of the wife that the wife was hopeful that there would be a re-union and that therefore, she did not lodge a complaint at the inception so as not to spoil the chances of amicable settlement and re-union by precipitating the matters and that after the husband made his intentions clear by filing the OP, she had no other option but to file the criminal complaint, which she did not file earlier only with the fond hope that the disputes would be amicably resolved.

9.4 On the analysis of the afore-stated facts and contentions and the totality of the circumstances of the case, it is obvious that the inconvenience that would be caused to the wife would outweigh the inconvenience, if any that may be caused to the husband and that in the instant case the wife's convenience shall prevail and shall be preferred more particularly in the light of the fact that she is having custody of a suckling female child.

10. In the result, the Tr.C.M.P No.618 of 2016 is allowed and H.M.O.P.No.23 of 2016 is withdrawn from the file of the Court of the learned Senior Civil Judge, Rayachoti, Kadapa District, and is transferred to the file of the Family Court, Tirupati, for trial and disposal, in accordance with the procedure established by law.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.



M. SEETHARAMA MURTI, J

02nd January, 2017
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