

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER C.M.P.No.426 OF 2017

ORDER:

This petition is filed to withdraw F.C.O.P.No.1513 of 2015 pending on the file of Judge, Family Court, Hyderabad and to transfer the same to the Senior Civil Judge, Bhuvangir, Yadagiri Bhuvangir District.

The petitioner filed the present petition mainly on two grounds. First ground is that she being a woman unable to perform journey covering more than 70 Kms., while taking care of two female children aged one year and two years. The second ground is that the D.V.C. filed by the petitioner in D.V.C.No.150 of 2016 and Maintenance Case are pending in Alair Courts and a crime registered against the respondent for the offence punishable under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act in Crime No.99 of 2016 is pending for investigation before the S.H.O., Yadagirigutta, therefore, the respondent has to appear before the Courts in connection with the above cases and whereas she is facing difficulty to perform journey.

F.C.O.P. pending before the Judge, Family Court, Hyderabad is purely in civil nature and her presence on every date of adjournment is not required. At best her presence is required when her cross-examination is required to be

recorded or for any other specific purpose when the Court directed her to appear before the Court, as long as her counsel is representing her case and prosecuting the case on her behalf. Even otherwise her cross-examination can be recorded by videoconference and if such facility is not available, her husband-respondent herein shall deposit the expenses for traveling, boarding and lodging in terms of Order XXV of Code of Civil Procedure for herself and children if they required to accompany her, therefore, distance of 70 Kms., between Court and her residence and inability to perform journey is not a ground.

D.V.C. pending on the file of Judicial Magistrate of First Class, Aleru is an undisputed fact and similarly registration of Crime for difference offences of IPC and Dowry Prohibition Act is investigation before S.H.O., Yadagirigutta. But the D.V.C. cannot be tried along with O.P. since it is a different proceedings and appearance of the respondent can also be dispensed with in D.V.C. in view of the law declared by this Court in **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP. BY PUBLIC PROSECUTOR AND ANOTHER**¹ wherein this Court laid down certain principles at paragraph 14, they are as follows:

¹ 2015(2) ALD (CrI.) 470

“i) Since the remedies under D.V Act are civil remedies, the Magistrate in view of his powers under Section 28(2) of D.V Act shall issue notice to the parties for their first appearance and shall not insist for the attendance of the parties for every hearing and in case of non-appearance of the parties despite receiving notices, can conduct enquiry and pass exparte order with the material available. It is only in the exceptional cases where the Magistrate feels that the circumstance require that he can insist the presence of the parties even by adopting coercive measures.

ii) In view of the remedies which are in civil nature and enquiry is not a trial of criminal case, the quash petitions under Sec.482 Cr.P.C on the plea that the petitioners are unnecessarily arrayed as parties are not maintainable. It is only in exceptional cases like without there existing any domestic relationship as laid under Section 2(f) of the D.V. Act between the parties, the petitioner filed D.V. case against them or a competent Court has already acquitted them of the allegations which are identical to the ones leveled in the Domestic Violence Case, the respondents can seek for quashment of the proceedings since continuation of the proceedings in such instances certainly amounts to abuse of process of Court.”

In case of **Krishna Veni Nagam v. Harish Nagam**², 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

² JT 2017 (3) SC 190

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 principle laid down by the Hon'ble Apex Court indirectly indicates that the evidence of witness can be recorded by video conference, and if any available respondent shall deposit traveling, boarding and lodging expenses in terms of Order XXV of Code of Civil Procedure. Therefore, pendency of D.V.C. is no a ground to withdraw and transfer the F.C.O.P.

In view of the facts and circumstances stated above, the Judge, Family Court is requested not to insist the appearance of the petitioner herein on every date of adjournment as long as her counsel representing her and prosecuting the proceedings on her behalf and record her cross-examination by videoconference, if not available, the respondent be directed to deposit traveling, boarding and lodging expenses in terms of Order XXV of Code of Civil Procedure and on such deposit the petitioner shall appear before the Court and

depose. This direction does not preclude the Judge, Family Court to pass any order against the petitioner in the event of her counsel failed to represent and prosecute the proceedings, in accordance with law.

With the above direction, the petition is disposed of at the stage of admission. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this petition shall stand closed.

July 07, 2017

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JUSTICE M. SATYANARAYANA MURTHY



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