

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

TRANSFER CRIMINAL PETITION No.244 OF 2016,

TRANSFER CRIMINAL PETITION No.245 OF 2016

AND

TRANSFER CRIMINAL PETITION No.246 OF 2016

COMMON ORDER:

In Transfer Criminal Petition No.244 of 2016, the petitioner/husband requests to withdraw F.C.M.C. No.23 of 2015 on the file of Judge, Family Court at Srikakulam, and to transfer it to the Family Court at Visakhapatnam.

2. The very same petitioner along with three petitioners, who are the accused in C.C. No.456 of 2016 on the file of Additional Judicial Magistrate of First Class, Srikakulam, seeking transfer of C.C. No.456 of 2016 to the Judicial Magistrate of First Class, Visakhapatnam.

3. The very same petitioner along with two others, who are respondents in D.V.C. No.34 of 2015 on the file of Judicial Magistrate of First Class (Special Judge for Prohibition & Excise), Srikakulam, seeking transfer of D.V.C. No.34 of 2015 to the Judicial Magistrate of First Class, Visakhapatnam.

4. The grounds agitated by the petitioners are identical in making the request herein.

5. The petitioner in Transfer Criminal Petition No.244 of 2016, having narrated the fact situation in paragraph-11 of the affidavit

referred to in the above in the order passed by the Hon'ble Supreme Court in Transfer Petition (Civil) No.291 of 2016 filed by the 2nd respondent/*de facto* complainant had allowed the petition by order dated 5.9.2016 transferring the MAT. Case No.41 of 2015 pending on the file of Senior Civil Judge at Kudligi, Bellary State of Karnataka to the Family Court, Visakhapatnam of Andhra Pradesh State. He has extracted the order of the Hon'ble Supreme Court. The petitioner, therefore, prays that the petitioners have to face hardship in traveling to Srikakulam District and since the MAT. Case is also transferred to Visakhapatnam from Bellary of Karnataka State, it would be convenient for the petitioners to attend the Courts at Visakhapatnam and since there are residents of Bellary District of Karnataka State they will have to travel all the way by crossing Visakhapatnam District to reach Srikakulam and, therefore, sought to withdraw all these three cases and transfer the same to the Courts at Visakhapatnam since on the request of the 2nd respondent/*de facto* complainant, the MAT. Case No.41 of 2015 has been transferred to the Court at Visakhapatnam.

6. Heard Sri K. Pradeep Reddy, learned counsel for the petitioners, and Sri T. Rajasekhar Rao, learned counsel for the 2nd respondent/*de facto* complainant.

7. Learned counsel for the petitioners has also placed reliance in **Pradip Kumar Nath v. Sunita Debnath** (CPR No.3190 of 2013 with

CRAN 2135/2014, dt. 1.8.2014) rendered by the Hon'ble Calcutta High Court in order to substantiate the ground of convenience to the parties as the consideration in acceding to the reliefs in the present cases. He has also placed reliance on a decision of Guahati High Court in **Gitima Das v. Jitendera Nath Das**¹ and in **Ramananda Mondal v. State of West Bengal**, decided on 26.3.2011 of Calcutta High Court.

8. Learned counsel for the 2nd respondent/*de facto* complainant, on the other hand, placed reliance on a decision of the Hon'ble Supreme Court in **Rajesh Talwar v. Central Bureau of Investigation**², but, certainly, it would not aid the petitioner, as the grounds agitated by the petitioner therein seeking transfer are not alike in the present petitions.

9. It would be relevant to refer to the order of the Hon'ble Supreme Court referred to in the above, relied upon by the learned counsel for the petitioners, wherein MAT. Case No.41/2015 pending on the file of Kudligi, Bellary of Karnataka State is transferred to the Court at Visakhapatnam.

10. The order of the Hon'ble Supreme Court would clearly reflect that a joint request made by the learned counsel for the parties therein. Thus, the learned counsel for the respondent/*de facto* complainant since must have conceded to have the MAT. Case on the file of

¹ 2001 (4) GauLT 997

² (2012) 4 SCC 217

Family Court at Visakhapatnam, and keeping in view that the petitioners herein are residents of Bellary and keeping in view that the MAT. Case is already transferred to the file of Family Court at Visakhapatnam, it would be convenient to withdraw the Family Court Maintenance Case (FCMC) No.23 of 2015 filed by the *de facto* complainant to the Family Court at Visakhapatnam from the file of Family Court at Srikakulam, as it would be convenient to dispose of the same either by a joint trial or simultaneously with the MAT. Case No.41 of 2015, which is filed for restitution of conjugal rights.

11. On the very same ground, even D.V.C. No.34 of 2015 is withdrawn from the Judicial Magistrate of First Class (Special Judge for Prohibition & Excise) at Srikakulam to the I-Additional Chief Metropolitan Magistrate at Visakhapatnam. Thus, even in the Calendar Case No.456 of 2016 pending on the file of Additional Judicial Magistrate of First Class, Srikakulam is also withdrawn and transferred to the I-Additional Chief Metropolitan Magistrate at Visakhapatnam.

12. No doubt, the witnesses have to travel from Srikakulam District to Visakhapatnam District, but, when equated the convenience of the petitioners in all these three petitions in travelling from Bellary of Karnataka State to Visakhapatnam of Andhra Pradesh State, certainly, inconvenience that would be caused to the *de facto* complainant in all

these three cases would not be greater than the inconvenience which the petitioners would face.

13. Accordingly, all these Transfer Criminal Petitions are allowed.

Consequently, miscellaneous petitions if any pending in the Transfer Criminal Petitions shall stand closed.

A. SHANKAR NARAYANA, J

Dt. 23.03.2017
gbs

