

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

TRANSFER CRIMINAL PETITION No.39 OF 2017

ORDER:

The present Transfer Criminal Petition is filed under Section 407 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to withdraw D.V.C. No.43 of 2016 from the file of XIX Metropolitan Magistrate, Miyapur, Cyberabad and transfer the same to the Additional Judicial Magistrate of First Class, Sangareddy to try along with C.C. No.448 of 2015.

2. Heard Sri K. Saibabu, learned counsel for the petitioner and Sri Y. Joseph, learned counsel for respondent No.1 - *de facto* complainant.

3. The main ground, on which the present request is made by the petitioner - husband is, that he is working as a Data Entry Operator in Taxation Wing of Nucon Pneumatics Private Limited at Kothlapur, Sangareddy, Medak District and he lost his father; respondent No.1 - wife filed two different cases at two different places viz., D.V.C. No.43 of 2016 before the XIX Metropolitan Magistrate at Miyapur and C.C. No.458 of 2015 before the Additional Judicial Magistrate of First Class at Sangareddy for the offence punishable under Sections 498A, 494 and 109 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

4. The learned counsel for the petitioner has pointed out certain circumstances occurring on record. According to him, respondent No.1 - wife mentioned in jurisdiction column in D.V.C. No.43 of 2016 that she is residing with her parents at H.No.13-51, Serilingampally, Ranga Reddy District under the limits of Chandanagar Police Station, Cyberabad and shown the said address, but in the Calendar Case No.448 of 2015, she has shown a different address i.e., Kothlapur of Kondapur Mandal and present address on the date of filing the complaint shown as Quarter No.266/B, BHEL Township, Ramachandrapuram of Medak District, and, therefore, sought to accede to his request as both the cases would be tried by the Magistrate Court at Sangareddy.

5. Respondent No.1 - wife filed counter resisting the request, and her learned counsel would submit that it would be convenient for respondent No.1 - wife to conduct D.V.C. case in the learned Magistrate Court at Miyapur and it would cause great inconvenience for her in attending the Court at Sangareddy which is located at a distance of 40 KMs., whereas, the learned Magistrate Court at Miyapur is located at a distance of 5 KMs. from her residence.

i) The learned counsel for respondent - wife would submit that the chief-examination of PW.1 is already over in D.V.C. and the petitioner - husband is avoiding cross-examining the wife and also avoiding payment of interim maintenance granted and the medical expenses even. He also would submit that it is not safe for respondent

No.1 - wife to attend the Court at Sangareddy, as the petitioner - husband is violent in nature and very recently he had beaten and abused her cousin brother - B. Shankar on 10.04.2017 accusing him of supporting her and her father, concerning which, her cousin brother has given a complaint with the police at Sangareddy and a copy thereof is also filed along with the counter.

6. The very fact that respondent No.1 - wife has not chosen to get the Calendar Case No.458 of 2015 from the file of the Additional Judicial Magistrate of First Class, Sangareddy to the file of XIX Metropolitan Magistrate at Miyapur, Cyberabad, would stand adverse to her resistance put forth herein. This apart, having mentioned her residence at BHEL Township, R.C. Puram, Medak District when the complaint was filed for the offences punishable under Sections 498A, 494 and 109 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

7. Now, the short question that arises for consideration is:

Whether the request of the petitioner to withdraw D.V.C. No.43 of 2016 from the file of XIX Metropolitan Magistrate, Miyapur, and transfer the same to the file of Additional Judicial Magistrate of First Class, Sangareddy to try the same along with C.C. No.458 of 2015 can be acceded to?

8. It is no doubt true, the Calendar Case No.458 of 2015 is pending on the file of the learned Additional Judicial Magistrate of

First Class at Sangareddy, but respondent No.1 - wife is figuring as *de facto* complainant therein and her appearance before the said Court would be only on the occasion of giving evidence on being summoned as she is cited as LW.1 and, thus, there ends the matter. But, in case the D.V.C. is transferred to the Court at Sangareddy from the Court at Miyapur, respondent No.1 - wife, certainly, has to attend on every date of adjournment in D.V.C. case which is situated at a distance of 40 KMs.

9. It is also no doubt true, the learned counsel has pointed out the address mentioned in the complaint lodged by respondent No.1 - wife in C.C. No.458 of 2015, but just basing on the address given by her as BHEL Township, R.C. Puram, Medak District, it cannot be said that she has not shifted her residence to Serilingampally, Rangareddy District. When looked at the inconvenience, to which either party is put, certainly, in case the request of petitioner - husband to withdraw the D.V.C. No.43 of 2016 is transferred from the Court at Miyapur and transferred the same to the Court at Sangareddy, the inconvenience to which respondent No.1 - wife would be put to, certainly, be greater when compared to the inconvenience to which the petitioner - husband is put in attending the Court at Miyapur. Therefore, there is no merit in the present case.

10. This apart, next strong circumstance is, that the very offences alleged against the petitioner - husband in Calendar Case are punishable under Sections 498A, 494 and 109 of IPC and Sections 3

and 4 of the Dowry Prohibition Act, 1961. Certainly, it indicates the estranged feelings between the parties which, certainly, do not rule out in creating surcharged atmosphere when she comes to attend the case in D.V.C., in case it is transferred to the Court at Sangareddy. On the other hand, a direction can be given to the learned Magistrate at Miyapur to dispose of the D.V.C. No.43 of 2016 by framing a timeline. Similarly, if there is any jurisdiction issue being raised by either party, the same may be decided by the learned Magistrate. Since it is submitted that PW.1 as petitioner has already examined as PW.1 in-chief and coming up for her cross-examination, the learned XIX Metropolitan Magistrate at Miyapur, Cyberabad, is directed to dispose of the D.V.C. No.43 of 2016 within two months from the date of receipt of a copy of the order uninfluenced by the observations, if any, made hereinabove.

Therefore, the Criminal Petition is dismissed. As a sequel thereto, Miscellaneous Petitions, if any, pending in the Transfer Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

April 20, 2017.
Mgr