

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 367 OF 2017

AND

TRANSFER C.M.P.No. 374 OF 2017

COMMON ORDER:

These petitions under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') are filed by wife to withdraw O.P.Nos.426 and 427 of 2009 pending on the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar and transfer the same to any Court at City Civil Court, Hyderabad.

2. Initially, the respondent filed O.P.No.426 of 2009 before the Judge, Family Court, Hyderabad, under Section 13(1) (ia and ib) of the Hindu Marriage Act, 1955 seeking decree of divorce by dissolving the marriage between the petitioner and respondent and on receiving notice the petitioner filed O.P.No.427 of 2009 under Section 9 of the Hindi Marriage Act, 1955 for restitution of conjugal rights. Both O.Ps were transferred in pursuance of the order passed by this Court in Tr.C.M.P.Nos.29 and 30 of 2009 filed by the petitioner.

3. The first and foremost ground raised before this Court is that the Presiding Officer of the Court is biased, passed order on 27.01.2017. The second ground is that the Presiding Officer threatening the petitioner, who is practicing advocate before the Courts at Ranga Reddy and there is no chance of getting fair justice if the matter is tried by the Judge, Family Court, Ranga Reddy District at L.B.Nagar and sought for withdrawal and transfer of those Ops to any Court at City Civil Court, Hyderabad.

4. During hearing, learned counsel for the petitioner contended that the Presiding Officer is acting adverse to the interest of the petitioner and if the matter is disposed of by the Officer, the chances of getting fair justice are bleak and therefore, sought for withdrawal of the petitions from the Judge, Family Court, Ranga Reddy District at L.B.Nagar and transfer to any Court at City Civil Court, Hyderabad.

5. Whereas, learned counsel for the respondent contended that once O.Ps were withdrawn and transferred at the instance of the petitioner vide orders in Tr.C.M.P.Nos.29 and 30 of 2009, hence she cannot again sought for transfer of original petitions at her whims and fancies. The allegation that as the officer is bias, the petitioner will not getting fair justice, if the matter is disposed of by the Family Court, Ranga Reddy District at L.B.Nagar is baseless and on the basis of unsubstantiated allegations, the Court cannot withdraw and transfer original petitions. He also further contended that **only** at the instance of the petitioner, O.Ps under went 130 adjournments and are at the stage of arguments. Therefore at this stage, the petitions cannot be withdrawn and transferred to any other Court, prayed for dismissal of Tr.C.M.Ps.

6. Admittedly, the petitioner filed two Tr.C.M.P.Nos.29 and 30 of 2009 before this Court and the reason for seeking transfer of the petitions pending before the City Civil Court, Hyderabad, is that by the time she was pregnant and now on account of changed circumstances, again she sought for withdrawal and transfer of those petitions to the Courts at City Civil Court, Hyderabad. When the petitioner got transferred petitions to the Courts at L.B.Nagar on her application on account of inconvenience during those days, she cannot again seek

transfer of those petitions to the same Court from which they were withdrawn and transferred. The Court can exercise jurisdiction under Section 24 of C.P.C., based on certain principles laid down by various Courts.

7. The Apex Court in ***Kulwinder Kaur alias Kulwinder Gurcharan Singh Vs. Kandi Friends Educational Trust and others***¹ laid down the following general principles to exercise jurisdiction under Section 24 of C.P.C., to withdraw a pending suit and transfer to any other Court:

"Section 24 of the Code of Civil Procedure confers comprehensive power on the Court to transfer suits, appeals or other proceedings "at any stage" either on an application by any party or suo motu. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket 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.

It is true that normally while making an order of transfer, the Court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the Court and the circumstances which weighed in taking the action. Powers under Section 24 of the Code of Civil Procedure cannot be exercised ipse dixit in the manner in which it has been done in the present case."

It is further held that the following facts have to be taken into consideration in a situation in which it is duty of Court to transfer the case:

- (i) balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;*
- (ii) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;*
- (iii) issues raised by the parties;*

¹ AIR 2008 SC 1333

- (iv) *reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;*
- (v) *important questions of law involved or a considerable section of public interested in the litigation;*
- (vi) *"interest of justice" demanding for transfer of case, etc.*

The above guidelines are illustrative, but not substantive guidelines."

8. In view of the guidelines laid down by the Apex Court, while deciding any application under Section 24 of C.P.C., the Court must keep in mind the parameters for exercising such discretion. In the present case, Guideline No.4 i.e. reasonable apprehension in the mind of the litigant that he might not get justice in the Court in which the suit is pending, is one of the ground raised in the petition for withdrawal and transfer.

9. The reason for such apprehension is that the docket order dated 27.02.2017. The said order discloses that when a petition is filed to strike out the defence of the respondent, the Court directed the petitioner to seek appropriate remedy by executing the order passed by this Court granting maintenance. It is a judicial order, which is a subject matter of C.R.P.No.1539 of 2017 pending before this Court. This order has not become final. But the trial Court is bound to pass orders in incidental proceedings during pendency of the main proceedings expressing its opinion in favour of one or the other. But, mere expression of an opinion in an incidental matter, the Court cannot withdraw and transfer the matter from one Court to the other and it would not cause any prejudice to the petitioner. But it is a subject matter of C.R.P.No.1539 of 2017. When the petitioner contends that she would not get fair justice in the hands of the present Presiding Officer, it

is for her to substantiate such contention placing relevant material before the Court.

10. In ***Usmangani Adambhai Vahora Vs. State of Gujarat and another***², the Apex Court considered the ground invented by the parties that they would not get justice in the Court for seeking transfer of pending criminal case before one Court and transfer the same to other Court, exercising power under Section 406 of the Code of Criminal Procedure (for short, 'Cr.P.C.'). The law is one and the same for withdrawal and transfer based on apprehension that the party would not get justice in the Court. The Apex Court in the above judgment adverted to the principles laid down in ***Gurcharan Dass Chadha Vs. State of Rajasthan***³, wherein it was held as follows:

"... The law with regard to transfer of cases is well-settled. A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension."

² S.L.P. (Criminal) Nos. 9374-9375 of 2015

³ AIR 1966 SC 1418

11. Similarly, in ***Abdul Nazar Madani Vs. Stae of Tamil Nadu***⁴, in para No. 7, the Apex Court discussed the ground of apprehension that party will not get justice and concluded that the apprehension that he will not get fair justice is absolutely mercurial and cannot be said to be reasonable. Therefore, in the absence of any material to substantiate the ground that he would not get justice, the Court cannot exercise power under Section 24 of C.P.C. to withdraw and transfer any matter pending on the file of one Court to the other Court.

12. In all the above judgments, the Court consistently held that for transfer of cases from one Court to other Court based on allegations that there is a reasonable apprehension that the petitioner would not get fair justice. The petitioner is not required to administer that justice is inevitably failed and she is entitled to transfer the petition showing circumstances which can be inferred that she entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice not only be done, but it should be seen to be done. However, mere allegation that there is apprehension that justice will not be done in a given case is not sufficient. In other words, the Court has to further see whether the apprehension alleged is reasonable or not. The apprehension must not only be entertained, but must appear to the court to be a reasonable apprehension.

13. In view of the principles laid down in the above judgments, it is for the petitioner *prima facie* to prove that her apprehension is reasonable. But, here the basis is only the docket order dated 27.01.2017, which is a

⁴ (2000) 6 SCC 204

judicial order and subject matter of C.R.P.No.1539 of 2017. Even on a perusal of the docket order, it does not disclose anything i.e. the Presiding Officer of the Court passed the said order on bias etc.

14. The contention of the learned counsel for the petitioner is that the Presiding Officer is threatening the petitioner, who is practising as advocate in the Courts at L.B.Nagar. But no specific instance of threat is mentioned with details in the entire affidavit. Moreover, learned counsel for the respondent contended that the petitioner is threatening the Presiding Officer. In such a case, making allegations against the Presiding Officer by the petitioner and learned counsel for the respondent against the petitioner regarding threat is not substantiated by any material. The Presiding Officers are working totally in mostly charged atmosphere in the Courts on account of their self imposed restrictions or otherwise. In a similar situation, the Apex Court in **K.P.Tiwari Vs. State of M.P.**⁵ observed as follows:

"It has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks – more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive."

15. Therefore, attributing such an allegation of threat against the petitioner, who is a practising advocate, cannot form the basis for withdrawal and transfer of the matters. In fact, the Presiding Officers in the State, who are trained, will never face the risk of judicial highersensitivity. The very nature of the judicial function makes the Judges

⁵ 1994 Supp. (1) SCC 540

sympathetic and responsive. Their very training blesses them with 'insensitivity', as opposed to hypersensitivity. Judges are always seeking good reasons to explain wrong conduct. They know that there are always two sides to a coin. They neither give nor take offence, because they deal with persons and situations impartially, though with understanding judges more than others realize the foibles, the frustrations, the undercurrents and the tensions of litigants and litigation. But, as elsewhere, lines have to be drawn. The strains and mortification of litigation cannot be allowed to lead litigants to tarnish, terrorize and destroy the system of administration of justice by vilification of judges. It is not that judges need be protected, judges may well take care of themselves. It is the right and interest of the public in the due administration of justice that has to be protected as observed in **Asharam M. Jain Vs. A.T. Gupta and others**⁶. In view of these observations of the Apex Court in **Asharam M. Jain** (6th *supra*), it is the need of the day to protect the honest judicial officers by higher Courts to instill confidence on them, to administer justice in accordance with law, otherwise it is difficult for any officer to discharge his functions in judicial process, effectively, since, the officer constantly has to put a guard observing such scurrilous, vilificatory and unfounded attack and criticism made against him. In such case, the Presiding Officers of the Courts will not discharge their duties as effectively as possible.

16. In the present case, the allegation made against the Presiding Officer is that of threatening the petitioner, who is practising advocate. But this contention is not substantiated by any material and still she is

⁶ AIR 1983 SC 1151

practising before various Courts in Ranga Reddy District and no complaint is made against the Officer about the threat either to the High Court or to any other authority, who is superior authority to take action against the Officer. If any officer is guilty of misconduct by conducting himself in an unbecoming manner, the High Court shall not leave any officer unpunished for the misconduct, if it is proved. But making serious allegations against the Presiding Officer that he is threatening advocate, who is a member of the powerful association of advocates practising in the Courts. Therefore, based on such unfounded allegation of threat to the petitioner by the Presiding Officer, the petitioner cannot be withdrawn and transferred to any other Court.

17. Similarly, on the ground that she will not get justice and the Presiding Officer is acting in biased manner were also not substantiated by any material except the docket order dated 27.02.2017, which is subject matter of C.R.P.No.1539 of 2017, which is an order passed in interlocutory application expressing the opinion of the Officer instantly. Therefore, such expression of opinion in favour of one or the other party is not sufficient to withdraw and transfer the matter to any other Court.

18. A vague allegation is made about the threat by the Officer, though she is still practising in the same Courts. In one of the judgments of the Apex Court in ***Parminder Kaur (Smt.) Vs. State of Uttar Pradesh and another***⁷, the Supreme Court held that vague and unfounded allegations in transfer application against the respondents would not form the basis for transfer. But, here the allegation is against the Presiding Officer of the Court itself, which is not supported by any

⁷ (2007) 15 SCC 307

material and, therefore, the Apex Court declined to withdraw and transfer the matter pending before one Court to the other Court, while concluding that it is too nebulous a ground for transferring the cases from the trial Court, Rampur, to the Court of competent jurisdiction at Delhi or Chandigarh. Such allegation is not substantiated. Thus, in view of the law declared by various judgments referred above, the Court cannot exercise its power of withdrawal and transfer under Section 24 of C.P.C., on mere making allegations and making such a serious allegation that Presiding Officer threatened the petitioner, who is a practising advocate, is a matter of serious concern and it will not only effect the officer, but also effect the entire Judicial Institution. If such baseless allegations are accepted to withdraw and transfer the case as per whims and fancies of the petitioner, attributing invented allegations against the officer, it is difficult to run the institution, as the institution exists based on faith and confidence of the litigant public. If the litigant loses confidence or faith on the institution, no officer will work in the judiciary. If such practice is not nipped at the bud, it will spread like a cancer in the entire body of the Judicial Institution.

19. The petitioner, having got transferred the matters from City Civil Court, Hyderabad to Ranga Reddy Courts, now invented various grounds referred above, which are not substantiated and again seeking transfer to the same Court or to any other Court and even the allegation of bias is without any basis. Therefore, such practice cannot be encouraged by the High Courts while exercising power under Section 24 of C.P.C and parties cannot be allowed to seek transfer as and when they like from one Court to other. Therefore, I find no material in support of the

allegations made against the Officer to exercise power under Section 24 of C.P.C to withdraw and transfer the matters to any other Court. At the end, keeping in mind the interest of the Presiding Officers, against whom such unfounded allegation of threat is made, I feel that withdrawal and transfer of petitions to any other Court is with view to see that justice not only be done and appears to have been done, to wipe out apprehension from the mind of the petitioner.

20. Therefore, taking into consideration the facts and circumstances of the case and the contention of the petitioner, O.P.Nos. 426 and 427 of 2009 are withdrawn from the file of Judge, Family Court, Ranga Reddy District at L.B.Nagar and transferred to the Judge, Family Court, Malkajgiri. The Judge, Family Court, Malkajgiri is directed to dispose of petitions in accordance with law, after giving opportunity to both parties, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order.

21. With the above direction, the Transfer Civil Miscellaneous Petitions are disposed of. No costs.

Pending miscellaneous petitions, if any, shall stand dismissed in consequence.

M.SATYANARAYANA MURTHY, J.

Date: 22-06-2017.
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