

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
TRANSFER CIVIL MISCELLANEOUS PETITION NO.344 OF
2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of Code of Civil Procedure 1908, is filed to withdraw H.M.O.P.No.104 of 2016 pending on the file of Senior Civil Judge, Amalapuram and transfer the same to the file of Senior Civil Judge, Anakapally.

2. Wife is the petitioner and she contended that her marriage was solemnized on 10.05.2015 at Anakapalli; the respondent/husband necked out her from his matrimonial house with the aid of his parents; the respondent filed the above HMOP with false and frivolous allegations; she is taking shelter at her parents place i.e. Anakapalli, whereas the respondent is residing at Amalapura and it is inconvenient for her to appear before the Court at Amalapuram, undertaking journey for more than 100 kms and apart from that according to her, as per Section 19 of the Hindu Marriage Act, 1955 the petition shall be presented within the local limits of ordinary original civil jurisdiction, where the wife is taking shelter under her parents protection. Hence, this petition.

3. As seen from the allegations made in the petition, there are two grounds for withdrawal and transfer of the petition pending before the Senior Civil Judge, Amalapuram. The first

ground is that the petitioner is unable to undertake journey covering the distance of 100 kilometres on every date of adjournment. No doubt, it is difficult for a woman to undertake journey on every date of adjournment. But that itself is not a ground to withdraw and transfer the case. The Apex Court in **Krishna Veni Nagam v. Harish Nagam**¹ framed the following guidelines:

“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 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 Code of Civil Procedure.*
- iv) E-Mail address/phone number, if any, at which litigant from out station may communicate.”*

4. In view of above guidelines, inconvenience to undertake journey may not be a ground to withdraw and transfer O.P.No.104 of 2016 from one Court to another and at best the witness can be examined by video conference. However, in view of difficulty expressed by the petitioner to undertake journey of 100 kilometres, the Senior Civil Judge, Amalapuram, is directed not to insist the petitioner to appear

¹ AIR 2017 SC 1345

on every date of adjournment, except on the dates where her presence is required. If no facility of video conference is available, when the petitioner's presence is required, the respondent may be directed to deposit travelling, lodging, boarding and other incidental expenses vide guideline No.2 and furnish other details like address etc. to contact the petitioner vide guideline No.3. On such deposit, the petitioner shall appear before the Court on the date when her presence is required for cross-examination or for any other purpose. This direction would meet the ends of justice to serve the purpose.

5. The second ground for withdrawing the petition is that the petition shall be presented within the local limits of ordinary original civil jurisdiction, where the wife is taking shelter under her parents' protection. In the present case, the petitioner/wife is residing at Anakapally at her parents' house. Section 19 of the Hindu Marriage Act was considered by the Apex Court in **Krishna Veni Nagam** (supra) and held that the said section permits proceedings to be filed not only at a place where the wife resides, but also at place where marriage is solemnized or the place where the parties last resided together. At the same time, under the law the husband is legally entitled to file proceedings at such places. Territorial jurisdiction of court is statutorily laid down in C.P.C. or other concerned statutes. In the present case the

petitioner and respondent lived together lastly jurisdictional limits of Amalapuram, in view of allegation in the petition that she was necked out from the house which is within the jurisdictional limits of Amalapuram Court, hence, on this ground no relief can be granted. Therefore, I am not inclined to withdraw H.M.O.P.No.104 of 2016 pending on the file of Senior Civil Judge, Amalapuram and transfer the same to the Senior Civil Judge, Anakapally.

6. With the above direction, the Transfer Civil Miscellaneous Petition is disposed of.

Miscellaneous petitions, if any, pending in this petition shall stand closed. There shall be no order as to costs.

JUNE 06, 2017
kvrn

M. SATYANARAYANA MURTHY, J

