

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr. CIVIL MISCELLENEANEOUS PETITION No.555 of 2017

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of CPC, is filed by the petitioner to withdraw O.P.No.334 of 2017 pending on the file of Judge, Family Court, City Civil Court at Hyderabad and transfer to Senior Civil Judge, Suryapet, Suryapet District.

The petitioner herein is the respondent in O.P.No.334 of 2017, her husband filed petition under Section 13(1) (a) and (ib) of Hindu Marriage Act, 1955, for dissolution of the marriage by granting decree of divorce on the ground of cruelty etc.,

On receipt of summons in the OP, she lodged a report with the Police, which is registered as a case in Cr.No.159 of 2017 of Suryapet II Town Police Station for the offence punishable under Section 498-A IPC, which is pending for investigation.

The main ground urged for withdrawal and transfer, exercising power under Section 24 of CPC is specifically mentioned in the last para of page No.3 of the affidavit filed along with the petition, which is extracted hereunder for better appreciation:

“ It is submitted that as the respondent herein is working in Hyderabad city police department as mentioned supra, thus the petitioner having strong suspicion that the said respondent influencing in all manners by misusing his official chair of Sub Inspector etc., before Hon'ble Courts proceedings etc., thus the petitioner herein is not expecting a fair trial before the above Hon'ble Court and if the respondent herein will be success in his said illegal doings, then the petitioner herein will be put to great irreparable loss and will also put to great defeat of justice, which in future will not be compensated in any manner whatsoever.”

It is further averred that the petitioner has no means to maintain herself and to meet both traveling and other incidental expenses while

taking care of the child and sought withdrawal of OP No.334 of 2017 and transfer the same to Senior Civil Judge, Suryapet.

During hearing, Sri Gajanand Sharma, learned counsel for the petitioner by over vehemence contended that after filing this transfer CMP, the petitioner filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, which is registered as DVC 16 of 2017, pending for adjudication and that the petitioner has no means to meet the expenses etc.,

Whereas, the counsel for the respondent opposed the petition on the ground that the serious allegation, which I extracted above, is not based on any material and prayed for dismissal of the petition.

Undisputedly, OP No.334 of 2017 filed under Section 13 (i)(ia) and (ib) of Hindu Marriage Act, is pending on the file of Judge, Family Court, City City Court, presided by a Officer in the rank of District Judge, but the petitioner sought for withdrawal of such pending petition and transfer to the Court of Senior Civil Judge, which is presided by an Officer of lower rank, on this ground alone, the petition is liable to be dismissed.

The other contention raised before this Court is that the respondent herein may influence the judicial officers. This allegation is serious in nature, which dents the credibility of the public on the judiciary, and this allegation is not based on even a piece of paper and no instance of such influencing the judicial officers by the respondent is averred in the entire affidavit of the petitioner. Making such baseless allegation to create a ground, is nothing but an abuse of process of the Court.

This Court in Pothuri Tulasi Das v Pothuri Hari Prasad and another (Transfer CMP No.79 of 2017, dt. 28.06.2017) had an occasion to decide

with similar question relying on various judgments of the Apex Court and dismissed the petition by imposing cost of Rs.3000/-. But, I am not going to impose such costs taking into consideration the nature of the proceedings. Therefore, in the absence of any specific instance of influencing any judicial officer by the respondent and on the bare allegation, the OP No.334 of 2017 pending on the file of Judge, Family Court, City Civil Court, Hyderabad cannot be withdrawn and transferred.

The other ground raised before this Court is that the petitioner has no means to meet both traveling and other incidental expenses etc., The petitioner being a lady, who is a house wife living at her parents house, may not be in a position to meet the expenses, but that by itself is not a ground to withdraw and transfer the case and if a direction is given to the respondent to pay both traveling expenses and other incidental charges whenever she attends the Court in connection with the above OP, it would serve the purpose.

Pendency of Crime No.159 of 2017 for investigation before II Police Station, Suryapet, is also not a ground since the investigation is not completed and no final report or charge sheet is filed. Even otherwise, Calender Case is triable by the Magistrate Court and not by the Senior Civil Judge or Family Court.

The other contention raised by the learned counsel for the petitioner during the course of arguments is pendency of DVC, but that is also not a ground for withdrawal of the case.

The counsel for the petitioner relied on a judgment of the Apex Court in *Bhartiben Ravibhai Rav v Ravibhai Govindbhai Rav* (Transfer Petition © No.350 of 2017, dt. 05.05.2017), wherein the Apex Court while dealing with similar case, concluded that when two other cases are

pending i.e., maintenance case and Calender Case registered for the offences under Sections 498-A and 406 IPC and Section 4 of Dowry Prohibition Act and DVC under Section 12 of the Protection of Woman from Domestic Violence Act, the Court can withdraw and transfer the case.

The Apex Court in latter Judgment in "*Santhini v. Vijaya Venketesh*¹, while overruling a part of the Judgment in *Krishna Veni Nagam v. Harish Nagam*² held that while deciding with a petition filed under Section 24 of CPC, the judgments of any Court under Section 24 CPC are not binding precedents and each case has to be decided on its own merits. Therefore, this judgment is not a binding precedent in view of full bench judgment. In the same Judgment, the Apex Court also observed that the practice of allowing petitions filed under Section 24 of CPC merely on the ground that the petitioner is a lady is impermissible and directed the Court to decide the petitions based on fact of each case.

The petitioner is required to appear before the Court on every date of adjournment, in view of special procedure prescribed under Family Court Act and if the Judge, Family Court is directed not to insist her appearance in compliance of the provisions of the Act, she is not required to appear except on the date whenever her personal appearance is required as directed by the Court or to record her cross examination by the Court while directing the respondent to pay both traveling and incidental charges whenever she attends the Court in connection with the above OP, it suffices to avoid her appearance before the Court on every date of adjournments.

¹ (2018) 1 SCC 1

² (2017) 4 SCC 150

In view of my findings, the Judge, Family Court, City Civil Court at Hyderabad, is directed not to insist petitioner's appearance on every date of adjournment except on the dates when her personal appearance is required, as long as her counsel is representing the petitioner and the respondent is directed to pay both travel and other incidental expenses to this petitioner and to the person, who accompanied, her whenever she attends the Court in connection with OP No.334 of 2017, this Order does not preclude the Judge, Family Court, from passing any Order in accordance with law, in the event, the counsel did not appear and represent the case.

With the above observation, this Transfer Civil Miscellaneous Petition is disposed of.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Dt: 31-01-2018

eha



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr. CIVIL MISCELLEANEIOUS PETITION No.555 of 2017

Dt. 31.01.2018

eha

