

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr. CIVIL MISCELLENEIOUS PETITION No.41 of 2018

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of CPC, is filed by the petitioner/wife to withdraw FCOP No.1043 of 2016 pending on the file of Judge, Family Judge at Vijayawada, Krishna District, and transfer to Senior Civil Judge, Tadepalligudem, West Godavari District, on the following three grounds:

(i) She lodged a report with the police against this respondent/husband complaining that she was subjected to harassment for failure to meet his illegal demand of additional dowry and the same was registered as a case in Cr.No.225 of 2017 of Tadepalligudem Town P.S., for the offences punishable under Sections 498-A, 506 IPC and Section 3 and 4 of D.P.Act and it is pending for investigation; that she also filed maintenance case under Section 125 Cr.P.C before Additional Judicial First Class Magistrate, Tadepalligudem, which is not yet registered;

(ii) she being a lady having no means and staying at the parents house, not able to undertake journey, along with her child, who is aged 2 years, covering more than 120 Km from Tadepalligudem to Vijayawada; and

(iii) she is facing life threat whenever she attends the Court in connection with FC OP No. 1043 of 2016 pending on the file of Judge, Family Court at Vijayawada and prayed to withdraw FCOP No.1043 of 2016 and transfer the same to Senior Civil Judge, Tadepalligudem.

Heard learned counsel for the petitioner at the stage of admission, who reiterated the grounds urged in the petition.

The first ground raised by the learned counsel for the petitioner is that she lodged a report with Tadepalligudem Police against this respondent/husband, which was registered as a case in Cr.No.225 of 2017 for the offences under Sections 498-A, 506 IPC and Sections 3 and 4 of DP Act, which is pending for investigation. At the same time, she also filed a Petition under Section 125 of Cr.P.C for maintenance, which is not registered so far. Thus, there is absolutely no material to establish that maintenance case is pending, but a crime is pending for investigation. More so, the maintenance case and the crime is pending within the jurisdiction of Judicial First Class Magistrate, Tadepalligudem and on this ground alone, the FCOP No.1043 of 2016 cannot be withdrawn and transferred to the Court of Senior Civil Judge, Tadepalligudem.

The second ground urged before this Court is that she is unable to meet traveling and other incidental expenses and not in a position to appear before the Judge, Family Court, Vijayawada, while taking care of the child, who is aged 2 years, covering distance of more than 100 Km. No doubt, appearing before the Judge, Family Court, Vijayawada, on every date of adjournment is a difficult task for lady along with her 2 years old child. Therefore, her appearance before the Court on every date of adjournment is dispensed with while directing the Judge, Family court, not to insist her appearance as long as she is being represented by her counsel, except on the dates when her personal appearance is required inclusive of reconciliation and recording of her cross examination, subject to payment of both traveling and other incidental expenses for the petitioner and the person, who accompanied her, to attend the Court in connection with the above OP is suffice. However, this Order would not preclude the Judge, Family Court, Vijayawada, from passing appropriate Order, in accordance with law, in the event of her counsel failed to appear and represent the case on her behalf.

In view of the above direction, the second ground is no more available to exercise power under Section 24 of CPC.

The third ground raised by the petitioner is that she is facing life threat whenever she attends the Court in connection with FCOP No.1043 of 2016. She earlier lodged a report with the Police dt. 12.05.2017, complaining that the respondent/husband threatened her with dire consequences in the Court premises itself abusing her in filthy language and made an attempt to beat her and thereby it is difficult for her to appear before the Court in connection the said OP.

Curiously, a complaint dt. 24.08.2017 was lodged by the petitioner, which was registered as a case in Cr.No.225 of 2017 for the offences under Sections 498-A, 506 and Sections 3 and 4 of DP Act with the Police at Tadipalligudem and not with the Police at Vijayawada, where she was allegedly threatened while abusing her in filthy language. If really, such an incident was occurred in the Court premises at Vijayawada, she would have complained with the Police of Vijayawada or at least to the Presiding Officer of the Court at Vijayawada. But, instead of resorting to such procedure, she conveniently lodged a report with Tadepalligudem Police making allegations of abusing her in filthy language including threatening. FCOP No.1043 of 2016 is pending since 2016 and till the date of lodging the complaint dt.24.08.2017, i.e., just before filing this Petition, no incident of threat etc., occurred either in the Court premises or anywhere. Therefore, it appears that the incident dt. 24.08.2017 i.e., attempting to beat her and abusing her in filthy language is 3 months prior to filing of this Petition. But, this ground appears to be artificial and even the police did register the crime for the offences under Sections 498-A, 506 and Sections 3 and 4 of DP Act and it is pending investigation even today

i.e., after five months from the date of alleged incident, and no final report or charge sheet filed before the concerned Court.

In the above circumstances, on the ground of threat to her life in the hands of respondent, the jurisdiction of the Court cannot be diverted, since it is not based on any material. In the event of occurrence of any such untoward incident whenever she attends the Court in connection with the said OP, she may report with the police having jurisdiction over the area where the incident occurred or to the Presiding Officer of the Court. If any complaint is made by the petitioner in writing apprehending threat from the respondent, the Judge, Family Court, is directed to provide necessary police protection to this Petitioner whenever she attends the Court in connection with the said OP, subject to bearing necessary expenses.

FCOP 1043 of 2016 is pending before the Judge, Family Court at Vijayawada, which is presided by an Officer in the cadre of District Judge and the petitioner sought for withdrawal and transfer the case to the Senior Civil Judge, which is presided by an Officer in the inferior rank i.e., Senior Civil Judge. Therefore, the jurisdiction conferred on the superior Officer cannot be diverted to the inferior Court, presided by Junior Officer. On this ground also, the petition is liable to be dismissed.

In view of my observations made in the above paras with regard to the grounds raised by the petitioner for withdrawal and transfer of the FCOP 1043 of 2016, this Civil Miscellaneous Petition is liable to be dismissed as I find no merit in the contentions of the learned counsel for the petitioner.

With the above direction, this Transfer Civil Miscellaneous Petition is dismissed. The observations made in the Order will have no bearing on

the disposal of the main Petition and the Judge, Family Court, Vijayawada, is directed to dispose of the main petition uninfluenced by the observations or findings made herein above.

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

M. SATYANARAYANA MURTHY, J

Dt: 02-02-2018

eha



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr. CIVIL MISCELLENEIOUS PETITION No.41 of 2018

Dt. 02.02.2018

eha

