

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

TRANSFER C.M.P.No. 60 OF 2018

ORDER:

This transfer civil miscellaneous petition under Section 24 of the Code of Civil Procedure (for short, 'C.P.C.') is filed to withdraw F.C.OP.No.223 of 2017, pending on the file of the Judge, Family Court, Guntur and transfer the same to the Judge, Family Court, Vijayawada on the ground that the petitioner received a threat when she appeared before the Judge, Family Court in connection with reconciliation proceedings and that she lodged a port with the police on 30.05.2017, which is registered as Crime No.337 of 2017 of Bhavanipuram Police Station, Vijayawada, pending for investigation. Therefore, the petitioner sought for withdrawal of FCOP and transfer.

Heard learned counsel for the petitioner at the stage of admission.

During hearing, learned counsel for the petitioner reiterated the contentions stated in the affidavit that the petitioner was threatened with dire consequences by the respondent as she did not agree for the divorce by mutual consent and therefore, there is every danger for the life of the petitioner, if the matter is being tried before the Court at Guntur and requested to withdraw and transfer FCOP.

The contention of the petitioner is two fold. The first contention is that when the petitioner appeared before the Court for reconciliation in connection with FCOP, the respondent allegedly threatened to see her end, in case she did not agree for divorce with consent.

The respondent filed petition under Section 13(1a) of the Hindu Marriage Act for dissolution of marriage by decree of divorce. It appears from the submissions of the petitioner that the respondent insisted the petitioner to give consent for divorce while threatening with dire consequences. If really, the petitioner subjected to such threat, nothing prevented her to complain to the presiding officer of the Court or to the police concerned where the alleged threat took place and apart from that the police station is just opposite to the Court premises, but she did not lodged any report with the police against the respondent complaining that she was threatened with dire consequences, in case the petitioner did not agree for divorce in a petition filed under Section 13(1a) of the Hindu Marriage Act. Therefore, the alleged threat is not based on any material and on the lame excuse of threat, FCOP cannot be withdrawn and transferred. If for any reason, the petitioner was subjected to such threat at any stage of the proceedings, she is at liberty to give complaint to the police, which is just opposite to the Court premises or to the presiding officer of the Court and on receipt of such complaint in writing, either S.H.O. or presiding

officer of the Court shall provide necessary protection to the petitioner, whenever she attends the Court in connection with FCOP. The above direction would serve purpose of the petitioner.

The other ground raised before this Court is that the petitioner lodged report with the police, which is registered as case in Crime No.337 of 2017, Bhavanipuram Police Station, on 30.05.2017, which is pending for investigation for the last nine months. A copy of the report was placed on record registered for the offence punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. FCOP was filed on 27.04.2017 before the Judge, Family Court, Guntur. Immediately after receipt of summons in FCOP, the petitioner invented the ground and lodged report with the police and filing of report with the police is an arm twist method. Therefore, creating a ground by lodging report after receiving summons is not sufficient to exercise power under Section 24 C.P.C. to withdraw and transfer FCOP.

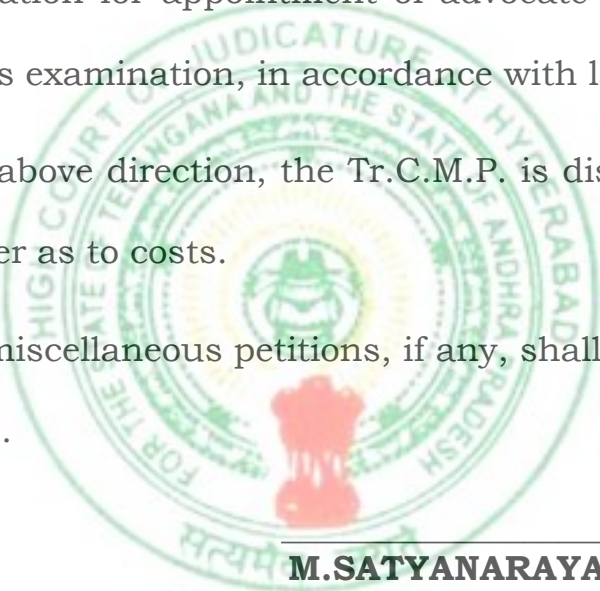
During hearing, learned counsel for the petitioner also brought to the notice of the Court that the petitioner is unable to undertake journey covering distance of 31 kms at the age of 31 years, but no such ground is raised in the petition.

With the above direction, the transfer C.M.P. is disposed of. However, the Judge, Family Court, Guntur is directed not to insist the appearance of the petitioner on every date of adjournment except on the dates when her personal appearance is required, as

long as she is being represented by any counsel. This order will not preclude the Court below from passing any order in accordance with law, in any event, counsel for the petitioner failed to represent the matter before the Court. When the petitioner is required to appear before the Court, the respondent be directed to pay traveling and other incidental expenses not only to the petitioner, but also to the person who is accompany her to attend the Court in connection with FCOP and also consider the request, if any, made, by filing application for appointment of advocate commissioner to record her cross examination, in accordance with law.

With the above direction, the Tr.C.M.P. is disposed of. There shall be no order as to costs.

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



M.SATYANARAYANA MURTHY, J.

Date: 08.02.2018
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