

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.147 OF 2017

ORDER:

This transfer criminal petition, under Section 407 of the Code of Criminal Procedure, 1973 (for short 'CrPC'), is filed by the petitioners, who are respondents in DVC No.30 of 2016 pending on the file of I Additional Junior Civil Judge, Kadapa, Kadapa District, to withdraw and transfer of the DVC to the Court of Junior Civil Judge-cum-X Metropolitan Magistrate, Cyberabad at Malkajgiri, Rangareddy District, on the ground that they are facing threat in the hands of the respondents herein and gave an instance that when he appeared before the Kadapa Court in connection with other cases pending therein, the second respondent herein and henchmen threatened the family members with dire consequences and they openly proclaimed that they would see the end of the petitioner and his family members.

The second ground urged in the petition is that the suit in O.S. No.79 of 2016 was filed on the file of Additional Junior Civil Judge, Malkajgiri, Rangareddy District, it was decreed in favour of third petitioner herein and the said suit was filed by the second respondent herein and her family members for grant of perpetual injunction restraining their men and henchmen restraining them from interfering with the peaceful possession and enjoyment of the suit schedule property i.e. House bearing No.38-29-60/20 admeasuring 130 sq. yards in Sy.No.278 at Malkajgiri, Rangareddy. If the DVC is withdrawn from the court of I Additional Junior Civil Judge, Kadapa, and transferred to any competent court at Secunderabad or Hyderabad, it is convenient for the

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petitioners to participate in the proceedings effectively and requested this Court to exercise power under Section 407 CrPC.

The respondents filed counter denying the material allegations while expressing inconvenience being caused to the second respondent in appearing before the Court while staying within the jurisdictional limits of Kadapa besides raising other grounds.

Admittedly, the DVC is pending before the I Additional Junior Civil Judge at Kadapa, whereas the petitioners herein who are the respondents in DVC are the residents of different places at Secunderabad. Petitioners 1 to 3 are residents of Secunderabad and the 4th petitioner is the resident of USA. The main ground urged in the petition is that they are facing life threat in the hands of the second respondent and her henchmen. The specific allegation made in paragraph 8 of the petition that the henchmen of the second respondent threatened the family members of the petitioners with dire consequences and they openly proclaimed that they would see the end of the life of petitioners and their family members, when they attended the Court in connection with other cases pending before the Kadapa court. But this contention is not based on any material. If really the petitioners faced any such threat when they attended the Court at Kadapa in connection with DVC or any other case, the petitioners have complained the same to the Presiding Officer of the Court or atleast lodged a written report with the police to take necessary action against the persons whom threatened the petitioners with dire consequences as alleged in the petition.

In the absence of any such material, it is difficult to exercise power under Section 407 CrPC to withdraw and transfer the DVC from the Court of I Additional Junior Civil Judge, Kadapa to any competent court at Secunderabad.

The counsel for the petitioners contended that on 17.08.2017 the petitioners lodged a complaint against the second respondent i.e. subsequent to filing of this petition, the said complaint was registered as a case in Crime No.232 of 2017 for the offence punishable under Sections 341 and 342 read with 34 of IPC. Taking advantage of this F.I.R., he contended that there is every threat to the life of the petitioners and they are apprehending danger to appear before the court at Kadapa. The present petition is filed before this court on 07.07.2017, but the incident allegedly occurred on 17.08.2017.

Therefore, the FIR is registered against any of the respondents and their men would not form the basis for exercising power under Section 407 CrPC to withdraw and transfer the DVC pending on the file of I Additional Junior Civil Judge Court, Kadapa and transfer the same to any competent court at Secunderabad as possibility to create such incident cannot be ruled out. Therefore, I find no merit in the grounds raised in the petition.

The other contention urged before this Court is that the appeal is pending against the Decree and Judgment in OS. No.79 of 2016 and it is convenient for the petitioners to appear before the Court at Secunderabad, but the second respondent is the native of Kadapa District and the DVC was filed before the Court having

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jurisdiction over the area where alleged domestic incident took place, but when the petitioners requested to divert the jurisdiction that vested on the Court, there must be some justifiable cause to exercise power under Section 407 Cr.P.C., but pendency of the appeal before the appellate court within the jurisdiction limits of Prl.District Judge, Rangareddy District, against the decree and judgment in O.S.No.79 of 2016 is not sufficient ground for the simple reason that in the appeal, the parties are not required to appear before the Court to examine themselves as witnesses. However, the convenience of these petitioners alone is not criteria to exercise power under Section 407 Cr.P.C. Therefore, on this ground also, the Court cannot exercise power under Section 407 CrPC. In any view of the matter, the petitioners expressed their inability to attend before the Court at Kadapa, where DVC is pending, on account of threat of the second respondent and her henchmen. Without disclosing the details like date and time etc., even if the alleged threat is true, the concerned police will provide necessary police protection and if such direction is issued to the police, having jurisdiction over the area, where the court is situated to provide police protection and it enables the petitioners to appear before the court without fear in their mind.

It is to be mentioned here that in DVC, the parties are not required to appear on every date of adjournment and more or less it is a quasi civil in nature, except for enforcement of the order passed by the competent court and this Court in **GIDUTHURI KESARI KUMAR AND OTHERS V. STATE OF TELANGANA REP.**

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BY PUBLIC PROSECUTOR AND ANOTHER¹ clarified the legal position directing the Magistrate not to insist the parties on every date of adjournment.

Hence, I find that it is not a fit case to exercise power under Section 407 Cr.P.C. to withdraw DVC No.30 of 2016 from the Court of I Additional Junior Civil Judge, Kadapa and transfer the same to any competent court at Secunderabad.

Accordingly, the criminal petition is dismissed. However, the Station House Officer, Kadapa Taluq police station, is directed to give necessary protection to the petitioners whenever they attend the court in connection with DVC No.30 of 2016 pending on the file of I Additional Junior Civil Judge, Kadapa, subject to bearing expenses by the petitioners.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:14.06.2018
BV

¹ 2015(2) ALD (CrL) 470