

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr.C.M.P.No.88 of 2018

ORDER

This petition under Section 24 of C.P.C., is filed to withdraw F.C.O.P.No.994 of 2017 pending on the file of the Judge, Family Court, City Civil Court, Hyderabad, and transfer the same to the file of the Judge, Family Court-cum-IV Additional District Judge, Vijayawada, Krishna District, on three grounds.

2. The first ground urged by the petitioner is that she has to take care of her child, aged one year, and while attending the child, she cannot undertake journey covering distance of 267 kms between Vijayawada and Hyderabad, to appear before the Judge, Family Court at Hyderabad. The second ground is that she lodged a report with the police against the respondent for the offence punishable under Section 498-A IPC and the same was registered as Cr.No.134 of 2017 of Machavaram Police Station, Vijayawada, and the same is pending for investigation. The third ground is that she also filed M.C.No.159 of 2017 on the file of the Judge, Family Court-cum-IV Additional District Judge, Krishna, Vijayawada, claiming maintenance and D.V.C.No.171 of 2017 on the file of Metropolitan Magistrate, Vijayawada, and therefore, requested this Court to withdraw FCOP No.994 of 2017 pending on the file of the Judge, Family Court, City Civil Court, Hyderabad and transfer the same to the file of the Judge, Family Court-cum-IV Additional District Judge, Vijayawada, Krishna District.

3. At the stage of admission, the counsel for petitioner reiterated the contentions urged in the petition while expressing the difficulty of petitioner to appear before the Court at Hyderabad on every date of adjournment and requested to pass appropriate orders.

4. The respondent/husband filed FCOP No.994 of 2017 for restitution of conjugal rights, alleging that the petitioner deserted him without any cause much less sufficient cause and living separately. He also raised several other contentions in the FCOP.

5. So far as the first ground is concerned, in a petition filed for restitution of conjugal rights before the Judge, Family Court, Hyderabad, the respondent, petitioner herein, has to appear before the Court on every date of adjournment in terms of the Rules framed under Family Courts Act. The first ground urged by petitioner is that it is inconvenient to appear before the Court while taking care of the girl child, aged one year, by undergoing journey of more than 267 Kms, but if a direction is issued to the Judge, Family Court, Hyderabad, not to insist her personal appearance on every date of adjournment, except on the dates when reconciliation proceedings are taken place or on the date when her cross-examination is required to be recorded or on any other day whenever her personal appearance is required, the ground of inconvenience would disappear.

6. Therefore, the Judge, Family Court, City Civil Court, Hyderabad, is requested not to insist the personal appearance of petitioner in FCOP No.994 of 2017 pending before the said Court,

on every date of adjournment, except on the date of reconciliation proceedings or on the date of recording her cross-examination or on any other day when her personal appearance is required as directed by the Court, as long as her counsel is representing the case of the petitioner, and whenever the personal appearance of petitioner is required, the respondent be directed to pay travelling and other incidental expenses for her stay, food etc, not only to her but also to the person, who accompanies her, to appear before the Court in connection with the said OP. But this order would not preclude the Judge, Family Court, City Civil Court, Hyderabad, to pass any order in accordance with law, in the event of failure of her counsel to represent the matter.

7. So far as the second and third grounds are concerned, in Cr.No.134 of 2017, charge sheet was filed and the same was registered as C.C.No.889 of 2017 on the file of IV Additional Chief Metropolitan Magistrate-cum-Mahila Court, Vijayawada, for the offence punishable under Section 498-A IPC and that in DVC and MC filed by petitioner, the procedure for trial is governed by Cr.P.C., whereas the procedure in FCOP is governed by the Rules framed under Family Court Act and CPC. Even if FCOP is withdrawn and transferred, it would not serve any purpose, except causing inconvenience and the Court cannot exercise such power on mere asking. The Full Bench judgment of the Apex Court in **Santhini v. Vijaya Venketesh**¹, while overruling the judgment in **Krishna Veni Nagam v. Harish Nagam**², held as follows:

¹ (2018) 1 SCC 1

² JT 2017 (3) SC 190

“In “Mona Aresh Goel v. Aresh Satya Goel (2000) 9 SCC 255”; the three-Judge Bench was dealing with the transfer of the matrimonial proceedings for divorce that was instituted by the husband in Bombay. The prayer of the wife was to transfer the case from Bombay to Delhi. The averment was made that the wife had no independent income and her parents were not in a position to bear the expenses of her travel from Delhi to Bombay to contest the divorce proceedings. That apart, various inconveniences were set forth and the husband chose not to appear in the Transfer Petition.

The Court, considering the difficulties of the wife, transferred the case from Bombay to Delhi. In Lalita A. Ranga v. Ajay Champalal Ranga (2000) 9 SCC 355” the Court, taking note of the fact that the husband had not appeared and further appreciating the facts and circumstances of the case, thought it appropriate to transfer the petition so that the wife could contest the proceedings. Be it noted, the wife had a small child and she was at Jaipur and it was thought that it would be difficult for her to go to Bombay to contest the proceedings from time to time.

A two Judge Bench in Krishna Veni Nagam v. Harish Nagam (2017) 4 SCC 150, while dealing with transfer petition seeking transfer of a case instituted Under Section 13 of the Hindu Marriage Act, 1955 (for brevity, 'the 1955 Act') pending on the file of Jnd Presiding Judge, Family Court, Jabalpur, Madhya Pradesh to the Family Court, Hyderabad, Andhra Pradesh, took note of the grounds of transfer and keeping in view the approach of the Court to normally allow the transfer of the proceedings having regard to the convenience of the wife, felt disturbed expressing its concern to the difficulties faced by the litigants travelling to this Court and, accordingly, posed the question whether there was any possibility to avoid the same. It also took note of the fact that in the process of hearing of the transfer petition, the matrimonial matters which are required to be dealt with expeditiously are delayed. That impelled the Court to pass an order on 09.01.2017 which enumerated the facts including the plight asserted by the wife, the concept of territorial jurisdiction Under Section 19 of the 1955 Act, and reflected on the issues whether transfer of a case could be avoided and alternative mode could be thought of. Dwelling upon the said aspects, the Court articulated:

“In these circumstances, we are prima facie of the view that we need to consider whether we could pass a general order to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court. The Court may also pass orders from time to time for further deposit to ensure that the wife is not handicapped to defend the proceedings. In other cases, the husband may take proceedings before the Court in whose jurisdiction the wife resides which may lessen inconvenience to the parties and avoid delay. Any other option to remedy the situation can also be considered.

As the narration would exposit, the pivotal concern of the Court was whether an order could be passed so as to provide a better alternative to each individual who is compelled to move this Court.”

8. It is also contended by the petitioner that she is facing threat when she attends the Court at Hyderabad, but no complaint was lodged with the police or at least even she did not report the same to the Presiding Officer of the Court in writing. Hence, this contention is without any basis and therefore, on the said ground, the FCOP cannot be withdrawn and transferred.

9. In view of the serious observations made in the judgment of the Apex Court, I find that none of the grounds raised in the petition are suffice to withdraw and transfer FCOP No.994 of 2017 pending before the Judge, Family Court, Hyderabad to the Judge, Family Court, Vijayawada.

10. With the above directions, the Transfer CMP is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

20th February, 2018

sj