

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Tr. CIVIL MISCELLENEIOUS PETITION No.99 of 2018

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of CPC, is filed by the petitioner/husband to withdraw FCOP No.1466 of 2017 pending on the file of Judge, Family Court, Visakhapatnam and transfer to Judicial First Class Magistrate, Razole, East Godavari.

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

During hearing, learned counsel for the petitioner contends that the petitioner is not in a position to bear both traveling and other incidental expenses to appear before the Judge, Family Court at Visakhapatnam, on every date of adjournment, as he is an unemployee and unable to bear the expenses. Further, respondent/wife also lodged a complaint with Razole Police, which was registered as a case in Cr.No.173 of 2016 under Section 498-A IPC and prayed to withdraw and transfer the case to Judicial First Class Magistrate, Razole, East Godavari District.

Undisputedly, the respondent/wife filed a petition under Section 125 of Cr.P.C. before Judge, Family Court, Visakhapatnam, for grant of maintenance and it is pending adjudication. In the event of transfer and withdrawal of the case, the respondent being a lady is not supposed to travel from Visakhapatnam to Razole bearing both traveling and other incidental expenses and therefore, it is highly difficult for the respondent to appear before the Judicial First Class Magistrate, Razole, on every date of adjournment.

FCOP No.1466 of 2017 filed under Section 125 Cr.P.C. for grant of maintenance is pending on the file of Judge, Family Court, at Visakhapatnam, 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 Judicial First Class Magistrate, Razole, which is presided by an Officer of lower rank. Therefore, the jurisdiction conferred on the superior Officer cannot be diverted to the inferior Court, presided by Junior Officer.

Convenience or inconvenience of the parties is one of the consideration to exercise jurisdiction under Section 24 of CPC. The Apex Court in *Kulwinder Kaur @ Kulwinder Gurcharan Singh v Kandi Friends Education Trust and others*¹, laid down the following guidelines for withdrawal and transfer of the cases filed under Section 24 of CPC, which are as follows:

- (1) Balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;
- (2) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit.
- (3) Issues raised by the parties.
- (4) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending.
- (5) important questions of law involved or a considerable section of public interested in the litigation.
- (6) interest of justice demanding for transfer of case etc.,”

One of the condition is balance of convenience or inconvenience to the plaintiff or the defendant or the witnesses and the convenience or inconvenience of a particular place of trial having regard to the nature of the evidence on the points involved in the suit.

¹ 2008 (3) SCC page 659

The Apex Court in “*Santhini v. Vijaya Venketesh*”², while overruling a part of the Judgment in *Krishna Veni Nagam v. Harish Nagam*³ held that while deciding a petition filed under Section 24 of CPC, the judgments of any Court under Section 24 CPC are not precedents and each case has to be decided on its own merits.

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 1466 of 2017, this Transfer Miscellaneous Petition is liable to be dismissed as I find no merit in the contentions of the learned counsel for the petitioner.

Accordingly, this Transfer Civil Miscellaneous Petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Dt: 22-02-2018

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² (2018) 1 SCC 1

³ (2017) 4 SCC 150



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