

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P NO.517 OF 2017

ORDER:

This petition under Section 24 of C.P.C is filed to withdraw H.M.O.P.No.43 of 2017 pending on the file of Senior Civil Judge, Kovur, SPSR Nellore District and transfer the same to Senior Civil Judge, Avanigadda, Krishna District.

The petitioner herein/wife is the respondent in H.M.O.P.No.43 of 2017 filed under Section 9 of the Hindu Marriage Act for restitution of conjugal rights by the respondent/husband, alleging that the petitioner/wife refused to join with husband, deserted and left the company of the respondent/husband without any reasonable cause. After receiving summons in H.M.O.P.No.43 of 2017, the petitioner/wife along with his minor son filed M.C.No.45 of 2017 under Section 125 of Cr.P.C for grant of maintenance @ Rs.5,000/- and @ Rs.10,000/- respectively to them. Further, the petitioner/wife lodged a complaint against the respondent/husband on 09.04.2017 which is registered as Crime no.42 of 2017 on the file of Nagayalanka Police Station, Krishna District for the offences punishable under Sections 498-A IPC & Sections 3 & 4 of Dowry Prohibition Act and it is pending for investigation by the police.

It is also contended that, being a lady, it is difficult for the petitioner/wife to undertake journey covering distance of more than 300 kms and that, no part of cause of action arose within the jurisdictional limits of Senior Civil Judge, Kovur and sought to

withdraw H.M.O.P.No.43 of 2017 pending on the file of Senior Civil Judge, Kovur, SPSR Nellore District and transfer the same to Senior Civil Judge, Avanigadda, Krishna District.

Notice was ordered by this Court to the respondent/husband and the respondent/husband refused to receive the notice. Therefore, service of summons is deemed to have been effected on the respondent/husband.

During hearing, learned counsel for the respondent reiterated the contention urged in the petition.

Then main contention of the learned counsel for the petitioner is that, she being an unemployed lady is not in a position to undertake journey covering more than 300 kms to attend the proceedings pending before the Senior Civil Judge, Kovur, Nellore and she is facing severe financial crisis. Further, it is contended that the proceedings before Senior Civil Judge, Kovur are civil in nature and her appearance on every date of adjournment is not required, unlike proceedings before, Judge Family Court. If, a direction is issued to the Senior Civil Judge, Kovur not to insist, appearance on every date of adjournment, except on the date as fixed by the Senior Civil Judge for reconciliation and for recording her evidence. Therefore, the grounds of inconvenience is not sufficient to withdraw H.M.O.P.No.43 of 2017 pending on the file of Senior Civil Judge, Kovur, SPSR Nellore District and transfer the same to Senior Civil Judge, Avanigadda, Krishna District and if, for any reason, she is required to appear before the Court on any date, as directed by the Court, the respondent/husband be directed to pay travelling and

other incidental expenses for food and stay not only to the petitioner/wife, but also to the person who accompanied her whenever she attends the Court in connection with the proceedings in H.M.O.P.No.43 of 2017. Therefore, lack of funds to undertake the journey is also not a ground.

The other contention raised by the learned counsel for the petitioner before this Court is that, M.C.No.45 of 2017 filed under Section 125 Cr.P.C is pending before the Judicial First Class Magistrate, Avanigadda and Crime No.43 of 2017 is pending against the respondent/husband before Nagayalanka Police Station, Krishna District, which is pending for investigation.

It is to be noted that, M.C.No.45 of 2017 filed under Section 125 Cr.P.C shall be tried by a Magistrate of First Class and whereas, H.M.O.P.No.43 of 2017 shall be tried by an officer in the cadre of Senior Civil Judge, but not by the Magistrate. Even if, H.M.O.P.No.43 of 2017 is transferred, no purpose would be served, except compelling the respondent/husband to appear before the Court on the dates of adjournments by engaging the counsel.

Section 24 of C.P.C. conferred discretionary jurisdiction on the Court to withdraw and transfer the cases pending on the file of one Court subordinate to High Court and under its control and such jurisdiction has to be exercised with care and caution keeping in view the inconvenience being caused to the parties.

Section 24 of CPC extends the option of getting the forum changed to either party to a suit and gives them the option to move an application for transfer of suit to another Court. This section also empowers the High Court to *suo moto* (on its own motion)

withdraw any case from a subordinate Court and adjudicate on it or transfer it to another Court. The High Court exercises its powers under this section keeping in mind the interest of justice and convenience of the parties. It is to be ensured that unnecessary inconvenience is not caused to any party as held in “K.Meenambigai v. Poovanandan (MANU/TN/1193/2008)”

Even otherwise, the judgments of Apex Court are consistent to the effect that the power under Section 24 of C.P.C. is purely discretionary and such power has to be exercised sparingly.

In the recent judgment “**Santhini v. Vijaya Venketesh**¹” the Apex Court discussed the law declared by the Apex Court in various judgments, where inconvenience of the wife alone is taking in to consideration and held as follows:

“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

¹ (2018) 1 SCC 1

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 IInd 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.”

The Apex Court took note of inconvenience being caused to the parties but not the inconvenience to the wife alone, considering

the facts and circumstances of the case adverting to the earlier judgment rendered in “Ram Gulam Pandit v. Umesh J. Prasad” and “Rajwinder Kaur v. Balwinder Singh” (as referred in the judgment) and opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by this Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwell upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion for each and every occasion whenever she was required to attend the Court. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner.

The Apex Court also laid down the following six guidelines.

“(i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.

(ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.

(iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.

(iv) In a transfer petition, video conferencing cannot be directed.

(v) Our directions shall apply prospectively.

(vi) The decision in Krishna Veni Nagam (supra) is overruled to the aforesaid extent.”

In **Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others**², the Supreme Court held as follows:

“Section 24 CPC confers comprehensive power on the court to transfer suits, appeals or other proceedings “at any stage” either on an application by any party or suo motu. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

It is true that normally while making an order of transfer, the court may not enter into merits of the matter as it may affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the court and the circumstances which weighed in taking the action. Powers under Section 24 CPC cannot be exercised ipse dixit in the manner in which it has been done in the present case.”

It is further held by the Supreme Court that the following factors have to be taken into consideration in a situation in which it is duty of court to transfer the case:

- (i) balance of convenience or inconvenience to the plaintiff or the defendant or witnesses;
- (ii) convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit;
- (iii) issues raised by the parties;

² 2008 (3) Supreme Court Cases Page 659

- (iv) reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending;
- (v) important questions of law involved or a considerable section of public interested in the litigation;
- (vi) “interest of justice” demanding for transfer of case, etc.

The Apex Court observed that, the above guidelines are illustrative, but not substantive guidelines.”

Applying the principles laid down by the Apex Court in the above judgment to the present facts of the case, none of the grounds urged by the petitioner/wife are sufficient to withdraw H.M.O.P.No.43 of 2017 pending on the file of Senior Civil Judge, Kovur, SPSR Nellore District and transfer the same to Senior Civil Judge, Avanigadda, Krishna District.

The other contention raised before this Court is that, no part of cause of action arose within the jurisdictional limits of Senior Civil Judge, Kovur, SPSR Nellore District. The question of territorial jurisdiction is not a pure question of law and it is a mixed question of law and fact, such question cannot be decided while deciding a petition under Section 24 C.P.C. However, leaving it open to the petitioner/wife to raise all such contentions before the Senior Civil Judge, Kovur, I am of the considered view that none of the grounds are sufficient to withdraw H.M.O.P.No.43 of 2017 pending on the file of Senior Civil Judge, Kovur, SPSR Nellore District and transfer the same to Senior Civil Judge, Avanigadda, Krishna District.

In the result, the petition is dismissed of without costs and the Senior Civil Judge, Kovur, SPSR Nellore District is directed as follows:

- (1) not to insist the petitioner's appearance on every date of adjournment in H.M.O.P.No.43 of 2017, as long as her counsel represents her. In the event the counsel for the petitioner/wife fails to appear and represent the matter, this order will not preclude the Senior Civil Judge, Kovur, SPSR Nellore District from passing any order, in accordance with law.
- (2) Whenever she attends the Court as directed by the Court, the respondent herein shall pay both travelling and other incidental expenses to the petitioner and the companion, who accompanied her to attend the Court at Kovur, SPSR Nellore.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:01.02.2018

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