

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Transfer Criminal Petition No.115 of 2018

ORDER:

The petitioner seeks to transfer M.C.No.16 of 2017 from the file of Judicial Magistrate of First Class, Kanigiri, Prakasam District to any competent Court at Machilipatnam, Krishna District.

2a) Petitioner is the husband of 1st respondent. His case is that their marriage was performed on 22.12.2012 at Kanigiri and out of wedlock a son was born on 29.10.2013 and due to some trivial disputes she left his company on 14.05.2015 leaving behind the son aged about 4¼ years studying LKG at Machilipatnam and thereafter, she gave a report to the Kanigiri PS against the petitioner which was registered as case in Cr.No.73 of 2015 for the offence under Section 498A r/w 34, 323 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961.

b) As she deserted him without there being any plausible cause, the petitioner filed HMOP No.102 of 2015 on the file of Principal Senior Civil Judge, Machilipatnam under Section 9 of Hindu Marriage Act, 1955 for restitution of conjugal rights. Later, the 1st respondent filed Tr.C.M.P.No.460 of 2015 in the High Court to transfer the said HMOP to any Court in Kadukur or Ongole. While so, 1st respondent filed M.C.No.29 of 2015 on the file of Judicial Magistrate of First Class, Kanigiri claiming maintenance.

c) Pending these proceedings the 1st respondent filed a writ of Habeas Corpus in W.P.No.28834 of 2015 before the High Court to direct the respondents 2 to 6 therein to produce her son and to grant custody. In that matter, there was a compromise and accordingly the writ petition was disposed of in terms of compromise on 17.12.2015. Pursuant to the said order, Cr.No.73 of 2015 was closed before the Lok Adalat Bench at Kanigiri and M.C.No.29 of 2015 was withdrawn by the 1st respondent and HMOP No.102 of 2015 pending on the file of Principal Senior Civil Judge, Machilipatnam was allowed. However, the 1st respondent did not join him pursuant to the direction in HMOP No.102 of 2015 and on the other hand she filed MC.No.16 of 2017 before the Judicial Magistrate of First Class, Kanigiri.

d) The further case of the petitioner is that he is working as Sales Executive in private Bank at Machilipatnam and he is taking care of his tender aged son. Therefore, it is difficult for him to travel from Machilipatnam to Kanigiri which is at a distance of 260 Kms. to attend the Court on every adjournment. Besides, he has to leave the tender aged son at Machilipatnam to the care of his mother who is an old lady.

Hence the present Transfer Criminal Petition.

3) Though notice was served on 1st respondent, she did not appear. Hence, heard learned counsel for petitioner, Sri T.Pradyumna Kumar Reddy.

4) As can be seen, even according to the petitioner, the distance between Kanigiri where M.C.No.16 of 2017 is pending and Machilipatnam is about 260 KMs. The case is filed by 1st respondent seeking maintenance on the ground that she is not able to maintain herself. In such circumstances, if the MC were to be transferred from Kanigiri to any Court at Machilipatnam, the difficulty will be more for her who is a lady having no financial assistance to travel about 260 KMs. to attend the Court for every adjournment than the petitioner who is a male person and an employee. The inconvenience projected by the petitioner is not convincing. It may be true that he has a tender aged son. However, as per his own admission, petitioner's mother is there to look after the boy for one or two days in the absence of the petitioner. So, in any view of the matter, it is not a fit case to transfer M.C.No.16 of 2017 from the file of Judicial Magistrate of First Class, Kanigiri to any Court at Machilipatnam.

5) Accordingly, this Transfer Criminal Petition is dismissed.

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

U.DURGA PRASAD RAO, J

Date: 06.08.2018

Murthy