

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

TRANSFER CRIMINAL PETITION No.180 OF 2018

ORDER:

This Transfer Criminal Petition, under Section 407 of the Code of Criminal Procedure, is filed by the petitioner - husband to withdraw D.V.C. No.30 of 2017 pending on the file of Judicial First Class Magistrate, Yellandu, Badradri Kothagudem District, and transfer the same to Court of Judicial First Class Magistrate, Adilabad.

Heard, the learned counsel for the petitioner and perused the material on record.

Learned counsel for the petitioner submits that the petitioner - husband initially filed D.O.P. No.436 of 2015 against the 1st respondent – wife on the file of IV Additional District Judge-cum-Family Court at Adilabad (for short, 'the Family Court'), seeking restitution of conjugal rights but, later, as he filed a Memo to withdraw the same, D.O.P. No.436 of 2015 got dismissed as not pressed on 20.04.2017. Subsequently, he filed D.O.P. No.319 of 2017 against the respondent – wife seeking decree of divorce on the grounds of cruelty and desertion and also filed G.W.O.P. No.285 of 2016 to declare him as guardian for his minor son viz., Jadi Harshavardhan and, during the pendency of those two Petitions at the Family Court, Adilabad, the 1st respondent, surprisingly, filed D.V.C. No.30 of 2017, on 07.12.2017, and M.C. No.40 of 2017, on 28.11.2017, on the file of Judicial First Class Magistrate, Yellandu, Badradri Kothagudem District, as if she is residing with her parents there, only with an intention to harass the petitioner and make him to roam around the Courts at Yellandu, which is at a distance of 350 K.M.s. from Adilabad and the petitioner being a Government Teacher at T.S. Model School, Jainath, Adilabad, it is very difficult to apply leave and attend the Court at Yellandu

on every date of adjournment. Hence, learned counsel for the petitioner requested to withdraw D.V.C. No.30 of 2017 pending on the file of the Court of Judicial First Class Magistrate, Yellandu, Badradri Kothagudem District and transfer the same to the Court of Judicial First Class Magistrate, Adilabad.

In view of the principles laid down by this Court in ***Giduthuri Kesari Kumar and others Vs. State of Telangana and others***¹, the parties need appear before the Court in Domestic Violence Cases on every date of adjournment since the remedies under the Protection of Women from Domestic Violence Act, 2005 (for short, 'the Act') are civil remedies and the Magistrate, under Section 28(2) of the Act, is vested with the power to conduct enquiry and pass *ex parte* orders, dismiss the Petition for default and also restore the same, in their absence, with the material available, however, the Court can insist for the presence of the parties only in exceptional cases *i.e.*, in cases when the Petition is filed under Section 31 of the Act or where there was no domestic relationship between the parties under Section 2(f) of the Act.

Therefore, in the instant case, the only ground urged by learned counsel for the petitioner is inconvenience being caused to the petitioner to travel from Adilabad to Yellandu to attend the Courts. Inconvenience of the parties may be one of the grounds to seek transfer of case from one Court to another but, in the present case, the question of inconvenience to the petitioner does not arise as he need not appear before the Judicial First Class Magistrate Court at Yellandu, on every date of adjournment, except whenever his presence is required by the Court, as held by this Court in ***Giduthuri Kesari Kumar***¹. However, the learned Judicial First Class Magistrate at Yellandu is directed to keep in mind the guidelines laid

¹ 2015 (2) ALD (Crl.) 470 (AP)

down by this Court in ***Giduthuri Kesari Kumar***¹ while disposing of the case in D.V.C. No.30 of 2017.

Accordingly, with the above observations, the Transfer Criminal Petition is disposed of.

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

M. SATYANARAYANA MURTHY, J

Date: 20.08.2018.
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