

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Tr.C.M.P. No.488 OF 2017

ORDER:

This petition is filed under Section 24 Code of Civil Procedure (for short "C.P.C.") to withdraw F.C.O.P.No.542 of 2017 pending on the file of Judge, Family Court, Ranga Reddy District and transfer the same to the Court of Senior Civil Judge, Kandukur, Prakasam District on the following grounds:

- (1) The petitioner lodged report with the police against the respondent for the offence under Section 498-A of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act and the same was registered as a case in Crime No.11 of 2017, police issued F.I.R. and after completion of investigation filed charge sheet before the Magistrate, which is registered as C.C.No.261 of 2017 and pending on the file of Additional Judicial Magistrate of First Class, Kandukur.
- (2) The petitioner also filed a petition under Section 12 of Protection of Women from Domestic Violence Act, which is at pre-registration stage as CFR.No.2417 of 2017.
- (3) The petitioner also filed a petition under Section 125 of Cr.P.C. claiming maintenance at the rate of Rs.50,000/- towards maintenance. The respondent instead of appearing in all the above cases with malafide intention filed F.C.O.P.No.542 of 2017 under Section 13 (1) (ia) of Hind Marriage Act and the same is pending on the file of Judge, Family Court, Ranga Reddy District for grant of decree of divorce.

It is contended that the petitioner is residing with her parents at Kandukur and the respondent has filed the F.C.O.P. at Ranga Reddy District only to harass the petitioner by dragging her all the way from Kandukur to Hyderabad and being a lady it is very difficult for the petitioner to appear before the Court at Ranga Reddy District and on the other hand the petitioner is dependent on her parents and she is not having any financial capacity to travel all the way from Kandukur to Ranga Reddy District to attend the Court in connection with F.C.O.P and she is facing life threat when attending Court at Ranga Reddy District and requesting this Court to withdraw the F.C.O.P.No.542 of 2017 pending on the file of Judge, Family Court, Ranga Reddy District and transfer the same to the Senior Civil Judge, Kandukur.

During hearing at the admission stage, learned counsel for the petitioner reiterated the grounds as narrated in the petition while contending that each case has to be decided on the facts and the facts vary from case to case and in view of the difficulty being faced by her to attend the Court at Ranga Reddy District, she sought to withdraw the F.C.O.P.No.542 of 2017 pending on the file of Judge, Family Court, Ranga Reddy District and transfer the same to the Senior Civil Judge, Kandukur.

Learned counsel for the respondent contended that various cases referred above are filed subsequent to filing of F.C.O.P.No.542 of 2017 before Judge, Family Court, Ranga Reddy District and none of the grounds urged in the petition are not sufficient to withdraw and transfer the case.

Admittedly, petition filed under Section 13 (1) (ia) of Hindu Marriage Act is pending on the file of Judge, Family Court, Ranga Reddy District and M.C.No.11 of 2017 filed under Section 125 of

Cr.P.C. is pending on the file of Additional Judicial Magistrate of First Class, Kandukur. Similarly C.C.No.261 of 2017 registered for the offence punishable under Section 498-A of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act is pending on the file of Judicial Magistrate of First Class, Kandukur. Petitioner also filed a petition under Section 12 of Protection of Women from Domestic Violence Act, which is at pre-registration stage.

Learned counsel for the petitioner contended that the petitioner is dependent on her parents and she is not having any financial capacity to meet the travelling expenses and other incidental expenses being a lady and filed M.C.No.11 of 2017 claiming maintenance, which is pending on the file of Additional Judicial Magistrate of First Class, Kandukur.

The petitioner is a Post Graduate in Business Management though from agricultural family and she prosecuted her studies at Ongole and the family background is not a ground to withdraw and transfer the case. But the only consideration is convenience of the party. The inconvenience expressed by the petitioner is that she being a lady unable to undertake journey covering 400 Kms and unable to meet the expenses both for travelling and incidental expenses.

If the Judge, Family Court is directed not to insist her appearance on every date of adjournment while directing the respondent to pay travelling expenses and other incidental expenses whenever her appearance is required as directed by the Court, this difficulty is no more available to the petitioner.

Even if, she wanted to examine herself as witness, she can seek appointment of advocate commissioner by filing an application subject to bearing expenses by the respondent. Therefore, these two

grounds are no more available. However, the petitioner filed any application under Order XXVI Rule (1) of C.P.C., the Judge, Family Court is requested to consider the application since the appointment of advocate-commissioner is inconsonance with Order XVIII Rule 4 (2) of C.P.C.

The 3rd ground urged before this Court is that the petitioner is facing life threat. When a direction is issued not to insist her appearance before the Judge, Family Court, the question of life threat would not arise and even otherwise no material is produced on record as to when she faced such threat to her life. In the absence of any details in the petition regarding life threat, the petition cannot be withdrawn and transferred on that ground.

The only ground to be considered for withdrawal and transfer the petition is convenience or inconvenience of the parties.

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 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 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

¹ (2018) 1 SCC 1

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, considering the facts and circumstances of the case adverted 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.”

Therefore, it is left open to the Court, after failure of settlement, to find out the feasibility of Video conference and decide whether it would sub-serve the cause of justice. At this stage, the petitioner cannot approach the Court seeking withdrawal and transfer of F.C.O.P. No.542 of 2017 pending on the file of Judge, Family Court, Ranga Reddy District. However, in view of the difficulty, urged in the petition, direction to Judge, Family Court, Ranga Reddy District not to insist the present petitioner's appearance on every date of adjournment while directing the respondent to pay traveling and other incidental expenses in connection with the above F.C.O.P. would serve the purpose and in the alternative she may apply for appointment of Advocate-commissioner to record her evidence if she wishes to examine

herself as witness in the above F.C.O.P. Therefore, I find absolutely no ground to withdraw the F.C.O.P.No.542 of 2017 pending on the file of Judge, Family Court, Ranga Reddy District and transfer the same to the Court of Senior Civil Judge, Kandukur, Prakasam District. Consequently, the petition is liable to be dismissed.

In the result, the petition is dismissed without costs and the Judge, Family Court, Ranga Reddy District at L.B.Nagar is directed as follows:

- (1) not to insist the petitioner's appearance on every date of adjournment in F.C.O.P.No.542 of 2017.
- (2) Whenever she attends the Court as directed by the Court, the respondent herein shall pay both traveling and other incidental expenses to the petitioner and the companion, who accompanied her to attend the Court at L.B.Nagar, Ranga Reddy District.
- (3) If any application is filed under Order XXVI Rule 1 read with Order XVIII Rule 4 (2) of C.P.C, the Judge, Family Court, Ranga Reddy District at L.B.Nagar may consider the application to record cross-examination of the petitioner.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

19.01.2018
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