

* THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

+ Transfer Civil Miscellaneous Petition No.229 of 2019

% Dated 23.01.2020

Smt. Pooja Tipirneni

... Petitioner

Vs.

\$ Sri Tipirneni Harsha

..Respondent

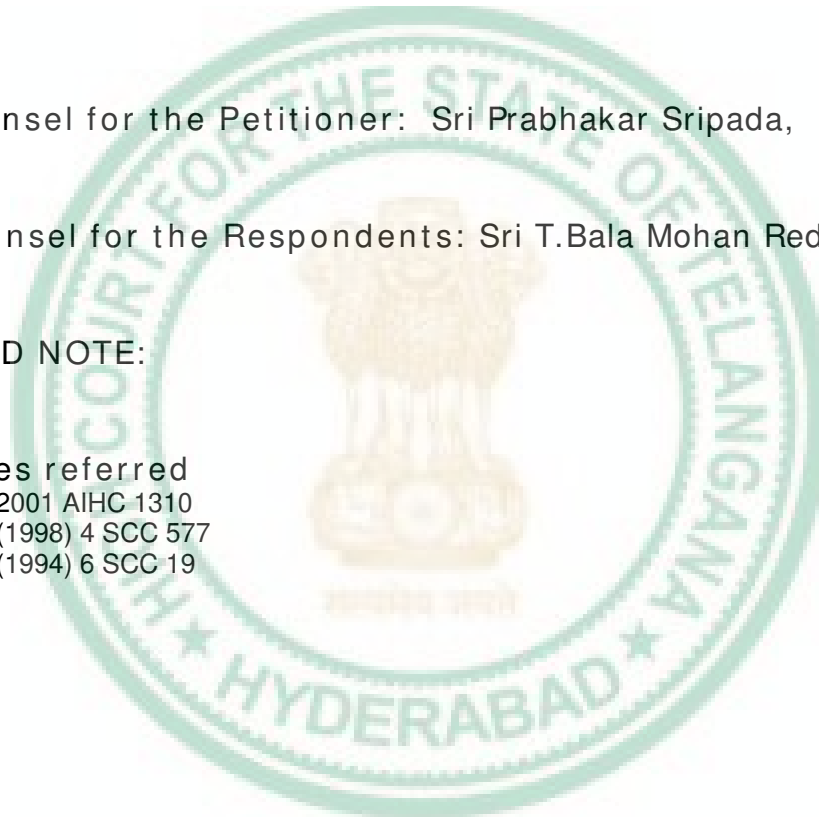
! Counsel for the Petitioner: Sri Prabhakar Sripada,

^ Counsel for the Respondents: Sri T.Bala Mohan Reddy

> HEAD NOTE:

? Cases referred

1. 2001 AIHC 1310
2. (1998) 4 SCC 577
3. (1994) 6 SCC 19



THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

TRANSFER C.M.P.No.229 of 2019

ORDER:

This Transfer Civil Miscellaneous Petition, under Section 24 of the Code of Civil Procedure, 1908, is filed by the petitioner/wife, seeking to withdraw F.C.O.P.No.367 of 2018 from the file of the Family Court, City Civil Court, Secunderabad, and transfer the same to the Family Court, City Civil Court, Hyderabad, for trial and disposal in accordance with law.

2. Heard the submissions of Sri Prabhakar Sripada, learned counsel for the petitioner/wife, Sri T.Bala Mohan Reddy, learned counsel for the respondent/husband and perused the record.

3. The learned counsel for the petitioner/wife would contend that the marriage between the petitioner/wife and the respondent/husband was performed on 05.02.2003 at Secunderabad. Out of the wedlock, the couple was blessed with a male child. Subsequently, disputes arose between the couple and the petitioner/wife is residing separately from the respondent/husband for the last five and half years. The respondent/husband is a homosexual and he had sexually abused the minor child in the past. The petitioner/wife had filed a complaint against the respondent/husband regarding the same. Subsequently, the respondent/husband filed the subject F.C.O.P.No.367 of 2018 before the Court below under Sections 7, 10 and 25 of the Guardians and Wards Act, 1890, read with

Section 6 of Hindu Minority and Guardianship Act, 1956, seeking custody of the minor child. In the said F.C.O.P., the respondent/husband had earlier filed I.A.No.680 of 2018 seeking custody of the minor child and the Court concerned granted custody of minor child from 15.06.2018 to 30.06.2018 in favour of the respondent/husband. The petitioner/wife challenged the said order by filing C.R.P.No.4055 of 2018 before this Court, wherein, this Court had set aside the said order and restored the custody of the minor child to the petitioner/wife. The order passed by this Court in CRP No.4055 of 2018 was upheld by the Hon'ble Apex Court in S.L.A.(C)No.7536/2019, dated 29.03.2019. Thereafter, the respondent/husband filed another application in I.A.No.470 of 2019 before the Court below seeking custody of the minor child. In that application, the Court below summoned the child and interrogated him in a frightening manner. The minor child had not made the statements which were recorded by the Court below in the order, dated 06.06.2019, passed in the said interlocutory application. When the petitioner/wife asked the minor child as to what he stated before the learned Judge of the Court below, the minor child denied the statements recorded by the Presiding Officer of the Court below. The Court below, though recorded a finding that the minor child had expressed his disinterest to go to his father, allowed the said I.A.No.470 of 2019 and thereby, exhibited biased nature in favour of the respondent/husband. The Court below also overlooked the video footage of the examination of the minor

child by a woman police officer and ignored to look into the report lodged by the petitioner/wife under POCSO Act. These aspects show the biased attitude of the Court below. If the subject FCOP continues to be on the file of the Family Court, City Civil Court, Secunderabad, it may cause great prejudice to the petitioner/wife in view of the biased attitude of the Presiding Officer of the said Court and ultimately prayed to withdraw F.C.O.P.No.367 of 2018 from the file of the Family Court, City Civil Court, Secunderabad, and transfer the same to the Family Court, City Civil Court, Hyderabad, for trial and disposal in accordance with law.

4. The respondent/husband filed a detailed counter and contended that this transfer petition is filed without valid grounds and reasons and is devoid of merit. The petitioner/wife is trying to cast aspersions on the learned Presiding Officer of the Court below. A complaint was lodged by the petitioner/wife under POCSO Act against the respondent/husband with false and ulterior motives. The said complaint was closed due to lack of evidence. The respondent/husband is not homosexual. He has not tutored the child at all. In fact, in CRP No.4055 of 2018, this Hon'ble High Court interacted with the minor child and was pleased to observe that the child was extremely happy with the father (respondent herein) and he was not tutored at all. The petitioner/wife is in the habit of making allegations against the learned Presiding Officers of the Courts. The petitioner/wife

has no respect towards the Courts and the orders passed by the Courts. She never complied the directions of the Courts and would approach higher Courts on every petty issue. The personal opinions of the petitioner/wife cannot be attributed to the learned Presiding Officers of the Courts. Casting aspersions on the Presiding Officer of the Court below is most unwarranted and are made with ulterior motives. The petitioner/wife cannot seek transfer of the case according to her own whims and fancies. If transfers are made as sought in this case, every unsatisfied litigant would resort to the same practice. The grounds on which the petitioner/wife is seeking transfer of the subject case are untenable and ultimately prayed to dismiss the Transfer Civil Miscellaneous Petition.

5. In view of the above submissions, the point that arises for determination in this Transfer Civil Miscellaneous Petition is as follows:

“Whether F.C.O.P.No.367 of 2018 pending on the file of the Family Court, City Civil Court, Secunderabad, be withdrawn and transferred to the Family Court, City Civil Court, Hyderabad?”

POINT:-

6. The basic principle governing the grant of relief under Section 24 of C.P.C. is that it should not be granted readily, according to the whims and fancies of a litigant, or on the ground that it casts doubt on the integrity, competence and reputation of the concerned Judge. Unless and until a

sufficiently cogent ground is shown for transfer of a case from one Court to another, transfer should be not allowed as a matter of course. The High Court has every power to transfer the matters pending in any Tribunal or Court subordinate to it by exercising powers under Section 24 of CPC either *suo motu* or at the request of either of the parties. When it is at the request of either of the parties, the High Court may transfer the matter only when there is sufficient material to show that the party is not likely to get justice before the Presiding Officer of a particular Court and it is essential in the interest of justice to transfer such a matter to any other Court. But unless there are specific instances of bias and unless the Presiding Officer has personal interest in the subject matter of the case, he cannot be branded as a biased Officer. This would demoralize the officers in the eye of the public and it becomes very difficult for such officers to work in a free and unbiased atmosphere. The mere apprehension of the petitioners on imaginary grounds cannot be accepted.

7. In *Smt.Zohra Begum and others V. Additional District Judge, Bareilly and others*¹, it has been held as follows:

“If every such apprehension is to be accepted, in that event, all cases in which a lawyer is involved, have to be transferred outside the Courts or districts in which he /she is practising. This apprehension that has been expressed is a subjective one. It cannot be substantiated objectively. Subjective apprehension is a

¹ 2001 AIHC 1310

particular state of mind of a particular person. Such ground of subjective satisfaction cannot be accepted. It is settled principle of law that if there is sufficiently reasonable suspicion, however little it may be, in the mind of the litigant, in such circumstances, the same has to be taken into account and weighed with, as a factor for the purpose of deciding an application under Section 24 of C.P.C. But such suspicion must have some nexus or some objectivity. If some one comes and says that he has some suspicion and apprehension in his mind, in that event, it will be too general a proposition and will destroy the entire infrastructure of the judicial system. Defeat of a case in the trial Court cannot be a ground for suspicion. If such a proposition is accepted, whenever a litigant loses a case, then he will be asking for transfer of his appeal, and in that event, all appeals are to be transferred simply on the basis of subjective suspicion on the part of the appellant. It will be too wide a proposition, which is very difficult to accept. In view of the settled principle, a suspicion should be accepted under the judicial norms and principles to be a suspicion, which could be reasonably harbored by a litigant. The Court has to find out the situation and the circumstances whether the suspicion so harbored, could be harbored reasonably by a sensible man.

8. In Chetak Construction Limited Vs. Om Prakash and others², the Hon'ble Apex Court deprecated the practice of making allegations against the Judges and observed as under:

"Indeed, no lawyer or litigant can be permitted to browbeat the court or malign the presiding officer with a view to get a favourable order. Judges shall not be able to perform their duties freely and fairly if such activities were permitted and in the result administration of justice would become a casualty and

² (1998) 4 SCC 577

rule of law would receive a setback. The Judges are obliged to decide cases impartially and without any fear or favour. Lawyers and litigants cannot be allowed to "terrorize" or "intimidate" Judges with a view to "secure" orders which they want. This is basic and fundamental and no civilised system of administration of justice can permit it....."

9. In *Bhajan Lal, Chief Minister, Haryana Vs. M/ s. Jindal Strips Limited and others*³, the Hon'ble Supreme Court of India observed that there may be some consternation and apprehension in the mind of a party and undoubtedly, he has a right to have fair trial, as guaranteed by the Constitution. The apprehension of bias must be reasonable, i.e. which a reasonable person can entertain. Even in that case, he has no right to ask for a change of Bench, for the reason that such an apprehension may be inadequate and he cannot be permitted to have the Bench of his choice. The Court further held as under:-

"Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as `sua causa', whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one."

10. Casting aspersions upon the character, ability or integrity of the judge/judicial officer/authority undermines the dignity of

³ (1994) 6 SCC 19

the court/authority and tends to create distrust in the popular mind and shakes the confidence of the people in the courts/tribunals, which is of prime importance to the litigants in the protection of their rights and liberties.

11. In the instant case, the petitioner, in paragraph No.13 of the affidavit filed in support of this petition, averred as follows:

“I do not believe that my child has stated what the judge has recorded. I have spoken to my son after reading the order of the Hon’ble Court and he has denied telling the Judge what was reflected in the order.....the Court itself has made sweeping remarks against me as if I have tutored my son.....My son told me that he was scared of disobeying the directions of the Judge and he acted as per the directions of the Judge, he gave ‘high five’ to his father and hugged him.” The petitioner further averred that the Presiding Officer of the lower Court has exhibited her bias attitude against the petitioner by making some observations and thereby pre-judged the case.

12. As seen from the material on record, except making these bald allegations, the petitioner/wife could not substantiate her apprehension. Every person has his own way of interacting the others. The Presiding Officer of the Court below, in discharge of her judicial functions, interacted with the child and recorded the findings. There is no need for the presiding officer of the Court below to record adverse/favourable findings against either of the parties. Even otherwise, the petitioner/wife did not adduce even a piece of evidence to substantiate her

apprehension that she may not get justice in the Court where the subject FCOP is pending. In the cases of this nature, a party has to have a 'reasonable' apprehension in his/her mind that he might not get justice in the Court in which the case is pending. The petitioner has failed to substantiate her apprehension, which seems to be more imaginary than real. She has failed to mention a single instance where the learned Judge has disclosed her biased mind or partial outlook against the petitioner. The order which the learned Judge has passed or the procedure which she has followed in dealing with the petition for custody of the child do not suffer from any short falling or suffer from little lack of power of expression and by no means constitute any act or conduct, which is indicative of bias or which may lead to a reasonable apprehension that the petitioner may receive injustice at the hand of the Presiding Officer. Mere suspicions and presumptions prevalent in the mind of the petitioner/wife that she would not get fair trial are baseless.

13. Be it noted that if there is a deliberate attempt to scandalize a judicial Officer of subordinate Court, it is bound to shake confidence of the litigating public in the system and has to be tackled strictly. The damage is caused not only to the reputation of the concerned Judge, but, also to the fair name of judiciary. Veiled threats, abrasive behaviour and use of disrespectful language are often designedly employed with a view to tame a Judge into submission to secure a desired order.

The foundation of our system is based on the independence and impartiality of the men having responsibility to impart justice i.e. Judicial Officers. If their confidence, impartiality and reputation is shaken, it is bound to affect the very independence of judiciary. Any person, if allowed to make disparaging and derogatory remarks against a Judicial Officer, with impunity, is bound to result in breaking down the majesty of justice.

14. Under these circumstances, this Court finds that the apprehension in the mind of the petitioner/wife cannot be termed as a reasonable apprehension and therefore, the ground on which the subject F.C.O.P. is sought to be transferred cannot be acceded to. The Transfer Civil Miscellaneous Petition is devoid of merit and is liable to be dismissed.

In the result, the Transfer Civil Miscellaneous Petition is dismissed.

Dr. Shameem Akther, J

23rd January, 2020.

Note:-

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