

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

Tr.C.M.P.Nos.158 and 159 of 2022

COMMON ORDER:

The petitioner/husband has filed both the Transfer Civil Miscellaneous Petitions. Tr.CMP No.158 of 2022 is filed under Section 24 of the Civil Procedure Code, 1908 (for short 'CPC') with a prayer for withdrawal of MC No.49 of 2020 pending on the file of the Judge, Family Court at Khammam and to transfer the same to the Judge, Family Court at Hyderabad or Secunderabad or Ranga Reddy District or Medchal-Malkajgiri District.

2. Whereas, Tr.CMP No.159 of 2022 is filed with a prayer to withdraw FCOP No.91 of 2020 pending on the file of the Judge, Family Court at Khammam and to transfer the same to the Judge, Family Court at Hyderabad or Secunderabad or Ranga Reddy District or Medchal-Malkajgiri District.

3. The main averments of the affidavit filed by the petitioner/husband in support of his plea for transfer of MC No.49 of 2020 and FCOP No.91 of 2020 from the

Judge, Family Court at Khammam to any Family Court either at Secunderabad, Hyderabad, Ranga Reddy District or Medchal-Malkajgiri District are that the respondent/wife and her minor child are living at Bachupally, Hyderabad within the limits of Medchal-Malkajgiri District and that the minor child is also admitted in a private school for Grade-I for the academic year 2021-22. It is only to harass him both the cases are filed and pending before the Judge, Family Court at Khammam. The respondent has voluntarily left his conjugal society and if both the cases are transferred to Hyderabad, it would be convenient for both the petitioner and the respondent. It is alleged that when he visited Khammam to attend the court case, relatives of his wife have threatened him indirectly that he should take his wife to lead family life, otherwise he has to face serious consequences. He was also threatened not to lodge any complaint before any of the authorities. Since his old aged mother lives at Rajahmundry and he is living at Hyderabad, out of fear, he did not lodge any complaint before the police, accordingly prayed for the withdrawal of MC No.49 of 2020 and FCOP No.91 of 2020 pending on the

file of the Judge, Family Court at Khammam to any of the Family Court at Hyderabad, Secunderabad, Ranga Reddy District or Medchal-Malkajgiri District.

4. The respondent/wife has filed a detailed counter in both the Tr.CMPs. The main averments of the counter are that all false allegations are made in the Tr.CMPs. She has filed MC No.49 of 2020 on the file of the Judge, Family Court at Khammam on 18.11.2020. The petitioner has got issued a legal notice and reply notice, through his advocate at Rajahmundry on various dates showing he is resident of Rajahmundry and he has not stated anywhere in those notices as to where he is living at Hyderabad. She has also filed a case in Crime No.25 of 2020 for the offences punishable under Sections 498-A, 406 and 506 of the Indian Penal Code, 1860 (for short 'IPC') read with Sections 3 and 4 of the Dowry Prohibition Act, 1961, which is pending on the file of the Special Mobile Court at Khammam. Though he has stated that she got her son admitted in a private school at Bachupally, any moment she is likely to move to Khammam and it will cause lot of

inconvenience to her if MC and FCOP are withdrawn from the learned Judge, Family Court at Khammam and transferred to any of the Family Court at Hyderabad, Secunderabad, Ranga Reddy District or Medchal-Malkajgiri District, as she has no male support at Hyderabad and staying alone with her son.

5. Heard the learned counsel on both sides. The submissions made on either side have received due consideration of this Court. Perused the material available on record.

6. It is the case of the petitioner that he is working at Hyderabad, whereas his old aged mother is at Rajahmundry. The respondent along with her minor child are also living at Hyderabad and that minor child is admitted in a private school at Bachupally. If both the maintenance case and FCOP are withdrawn from the file of the Judge, Family Court at Khammam and transferred to any one of the Family Courts in the limits of Hyderabad, Secunderabad, Ranga Reddy District or Medchal-Malkajgiri

District, it would be convenient for both the parties to attend the court cases without loss of time.

7. The respondent has strongly contended that the petitioner has suppressed the factum of filing a criminal case in Crime No.25 of 2020. He has also got issued legal notice and reply notice through an advocate from Rajahmundry address and nowhere he has mentioned his Hyderabad address, not filed any proof such as Aadhaar Card and Voter Card to show that he is residing at Hyderabad and that she is alone staying away from her parents at Hyderabad and any moment she is likely to shift to Khammam to stay with her parents and it is convenient for her to attend the Court at Khammam.

8. Section 19 (iii)(a) of the Hindu Marriage Act, 1955 provides that wife is entitled to pursue the matrimonial disputes before the Jurisdictional Courts where she is residing. Undisputedly, she has been living with her parents at Khammam and she along with her child are under the protective umbrella of her parents. May be she has admitted her son in a private school at Bachupally, she

has categorically stated that it would be more convenient for her to attend the Court at Khammam since she has her parents and other supporters at Khammam. MC No.49 of 2020 is only filed by the petitioner/wife on behalf of her minor child claiming maintenance.

9. Whereas, it is not the case of petitioner that he has been paying maintenance to his minor child or that he has paid the school fee to his minor child, more particularly, FCOP No.91 of 2020 is filed by the respondent/wife for restoration of conjugal rights and nowhere in his Tr.CMP the petitioner's husband has mentioned that he is making efforts for restitution of conjugal rights or that he has been taking care of interest of his minor child.

10. The only contention of the petitioner is that he was threatened by the relatives of his wife when he went to Khammam to attend the court cases and since his old aged mother is living alone at Rajahmundry, he has not complained to the police and if the MC and FCOP are continued before the Family Court at Khammam, he has a threat to his life.

11. In this context, I may refer to the judgment of the Hon'ble Supreme Court of India in ***Sangeetha alias Shreya v. Prasant Vijay Wargiya***¹ wherein it is held that if any threat perception is given to the respondent/husband, he is always at liberty to lodge a report before the police concerned or to complain before the concerned Court. If any such complaint is made, it will be considered by the Court or by the concerned police on its own merits. It is further held that between husband and wife, the convenience of the wife must prevail.

12. In ***N.C.V. Aishwarya v. A.S. Saravana Karthik Sha***² the Apex Court while dealing with the similar facts held that the applicant/wife who is young lady aged about 21 years staying alone along with her old aged parents, it is difficult for her to travel all the way from Chennai to Vellore to attend the court proceedings of the case filed by the respondent/husband seeking annulment of marriage, accordingly, considering the convenience of the wife

¹ 2004 (13) SCC 407

² 2022 Live Law (SC) 627

transferred the matter from the Family Court, Vellore to the jurisdictional Family Court at Chennai.

13. The Apex Court further held that the cardinal principle for exercise of power under Section 24 of C.P.C. is that ends of justice should demand the transfer of the suit, appeal or other proceedings and in matrimonial disputes whenever courts are called upon to consider the plea of transfer, the courts have to take into consideration the social strata of the spouses, their behavioural pattern, their standard of life prior to marriage and subsequent thereto and circumstances under which both the parties are eking out their livelihood and under whose protective umbrella they are seeking their sustenance and that given the prevailing socio economic paradigm in the Indian society generally it is the wife's convenience which must be looked into while considering the transfer application.

14. In the instant case, the petitioner has made an allegation that he was threatened by the relatives of the respondent/wife when he went to attend the Court at Khammam, no other material is filed in proof threatenings

made against him. Even if any such threat is given, he is always at liberty to initiate appropriate legal action either against his wife or her family members. It is not the case of the petitioner/ husband that he has been paying maintenance to his minor child or providing the school fee etc. or that the petitioner is permanently residing at Hyderabad and intentionally filed both the cases before the Family Court at Khammam.

15. In that view of the matter, considering the principles laid by the Apex Court in the above decisions and in view of Section 19 (iii)(a) of Hindu Marriage Act as wife is entitled to prosecute the matrimonial disputes before the Jurisdictional Courts where she has been residing after she left the company of her husband, I do not find any justification in the request of the petitioner/husband for withdrawal of MC No.49 of 2020 and FCOP No.91 of 2020 pending on the file of the Judge, Family Court at Khammam and to transfer the same to any of the Family Court either at Hyderabad or Secunderabad or Ranga Reddy District or Medchal-Malkajgiri District.

16. In the result, both the Transfer Civil Miscellaneous Petition Nos.158 and 159 of 2022 are dismissed. However, in the circumstances of the case, there shall be no order as to costs.

As a sequel, interlocutory applications, if any pending in these Tr.CMPs shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 05.09.2022
Isn