

THE HON'BLE SRI JUSTICE SAMBASIVA RAO NAIDU
TRANSFER CIVIL MISCELLANEOUS PETITION No.260
OF 2022

ORDER :

This Transfer Civil Miscellaneous Petition has been filed by the petitioner/wife under Section 24 of C.P.C., seeking transfer of O.P.No.1181 of 2022 from Family Court, Malkajgiri to Family Court at Adilabad on the ground of personal inconvenience to attend the Court at Malkajgiri.

2. As per the material averments made by the petitioner in the affidavit filed along with petition, the marriage between the parties to the present petition was performed on 13.02.2015 at Medak. Both the couple lead marital life at the parent's house of respondent at Hyderabad. The petitioner claimed that she lived with the respondent only for few days and during that short period she was subjected to physical and mental abuse, helplessness and anger in the hand of respondent and his family members. The petitioner claims that she has filed complaint which is subject matter of criminal case vide Crime No.69 of 2022 of

Women P.S., at Adilabad. The respondent has filed petition seeking divorce which was registered as O.P.No.1181 of 2022 on the file of Family Court, Malkajgiri. The petitioner claimed that her marriage was performed at Medak. She has been residing in Adilabad District. Therefore, the Family Court at Malkajgiri has no territorial jurisdiction. She has also complained that she has been expecting physical threat from the respondent and alleged that the respondent filed the said Divorce petition at Malkajgiri only to harass the petitioner and to force her for compromise. Therefore, the petitioner sought for transfer of divorce petition filed by the respondent from Malkajgiri to Adilabad.

3. The respondent appeared before this Court, filed counter denying all the material averment made by the petitioner and further submits that even as per the affidavit filed by the petitioner she and respondent continued their marital life at the house of respondent, but she filed complaint vide Crime No.69 of 2022 at Adilabad to harass the respondent, his old aged mother and sisters. As

per the complaint lodged in the above referred crime, the petitioner categorically stated that she is resident of A.S.Rao Nagar, Hyderabad, which itself proves that she has been residing at Hyderabad and filed criminal case at Adilabad only for the purpose of harassing the respondent and to bring him under pressure. The respondent has claimed that the petitioner had been to Adilabad and filed false complaint at women police station at Adilabad. The respondent further stated that in view of her specific averments in the complaint lodged against the respondent, his mother and sisters, it is very clear that she was residing at Sainikpuri of Hyderabad. The respondent claimed that he had put up separate residence with his wife at Plot No.204, Krishna Sai Apartment, Brundavan Colony, A.S.Rao Nagar, ECIL, Hyderabad in a leased accommodation.

4. The respondent has claimed that though the petitioner was residing at Hyderabad, she went to Adilabad to create jurisdiction for filing criminal cases for harassing the respondent. However, he has further stated that if the

petitioner is not able to bear the travel expenses, he is ready to pay the said amount whenever she attends the Family Court at Malkajgiri and he is ready to cooperate with the petitioner for proper disposal of FCOP No.1181 of 2022.

5. The respondent while relying on judgment of the Hon'ble Apex Court in a case between ***Preethi Sharma vs Manjit Sharma***¹ and in another judgment between ***Kangalakshmi vs A.Venkatesan***² and another judgment between ***Teena Chabra vs Manish Chabra***³, sought for dismissal of the petition.

5. Heard both parties.

6. Now the point for consideration is :

Whether there are any grounds to transfer O.P.No.1181 of 2022 filed by the respondent from Family Court, Malkajgiri to Family Court at Adilabad as prayed for?

¹ 2005 11 SCC 535

² 2004 13 SCC 405

³ 2004 13 SCC 411

7. POINT

The marriage between the couple is not in dispute. According to the petitioner, she lived with respondent for few days and later she was subjected to harassment. The learned counsel for the petitioner has submitted that in all matrimonial disputes, the interest of wife should be given priority. The petitioner being lady and resident of Adilabad, may not travel such a long distance for attending the divorce case filed by the respondent. He has placed reliance on the judgment between **N.C.V.Aishwarya vs. A.S.Saravana Karthik Sha⁴**, wherein the Hon'ble Apex Court was pleased to observe that when there are two or more proceedings are pending between the parties and if there is inconvenience to the wife to travel, the petition filed by the husband can be transferred.

8. The respondent relied on judgment between **Malyala Bhagya vs. Rallabandi Ramachary⁵**, wherein judgments of the Hon'ble Apex Court in **Santhini vs Vijaya**

⁴ 2022 SCC Online SC 1199

⁵ 2021 (5) ALD 442 (TS)

Venkatesh⁶ and **Shruti Kaushal Bisht v. Kushal R. Bisht⁷** (2020) 10 SCC 725 were discussed, and another judgment between **Krishna Veni Nagam vs Harish Nigam**. In the said judgment the Hon'ble Apex Court was pleased to observe as follows :

18. We, therefore, direct that in matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:-

- i) Availability of video conferencing facility.
- ii) Availability of legal aid service.
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.
- iv) E-mail address/phone number, if any, at which litigant from out station may communicate.

⁶ (2018)1 SCC 1

⁷ (2020) 10 SCC 725

9. The respondent has filed photo copy of rental agreement which goes to show that the couple has obtained leased accommodation for their stay at A.S.Rao Nagar, Hyderabad. It may be true that the petitioner has already filed complaint against the respondent, his mother and sisters and the same is pending before women police station at Adilabad.

10. The respondent has claimed that as per the description shown in the complaint, it is very clear that she was residing at A.S.Rao Nagar. However, according to the specific case of petitioner, she was forced to join her parents in view of disputes with the respondent. The documents placed before the Court, apart from oral arguments of learned counsel, clearly shows that there are no good terms between the couple. The petitioner/wife lodged two complaints against the respondent and his family members, whereas the respondent filed a petition seeking divorce. The grounds on which the petitioner sought for transfer of F.C.O.P is distance and financial involvement. The respondent is ready to bear the expenses

of the petitioner whenever she attends the Family Court at Malkajgiri. It may be true that the petitioner has to travel from Adilabad to attend the Family Court at Malkajgiri for defending the Divorce petition filed by the respondent, but it may not be necessary for her to attend each and every adjournment. At best she needs to attend the Court at the time of reconciliation and at the time of cross examination by the counsel for the respondent. The respondent is a tailor at Hyderabad. It is equally difficult for him to go and attend the Court at Adilabad for prosecuting his divorce petition.

11. As per the averments made by both parties, the criminal case filed by wife is at Adilabad, but the respondent claims that the said case was filed only to harass him and his family as they never resided at Adilabad. The petition filed by the respondent is rightly filed at a place where the couple last resided. Therefore, the said divorce petition need not be transferred to Adilabad. But, the respondent has to bear the travel expenses and

boarding charges of petitioner whenever she attend the Court.

12. Therefore, the petition is dismissed. However, with a direction to the respondent to deposit traveling expenditure and other necessary expenditure of the petition and her attendant whenever they appear before the Family Court at Malkajgiri for defending the Divorce petition filed by the respondent herein.

13. As a sequel, pending Miscellaneous Applications, if any, shall stand closed.

JUSTICE SAMBASIVA RAO NAIDU

Date: 09.12.2022
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