

THE HONOURABLE SRI JUSTICE V.V.S. RAO

TRANSFER CMP.NO. 225 OF 2001

05/10/2001

MRS. SNEHALATHA

DR. S. RAMAKRISHNA REDDY

COUNSEL FOR PETITIONER: MR. P.V. SANJAY KUMAR

COUNSEL FOR RESPONDENTS: MS. SUMALINI REDDY

:ORDER:

The petitioner invoked the jurisdiction of this Court under Section 24 of the Code of Civil Procedure, 1908 ('CPC' for brevity). She prays this Court to transfer the original petition being O.P.No.388 of 2001 on the file of the Court of the Judge, Family Court, Hyderabad ('Family Court, Hyderabad', for brevity) to the Court of the Judge, Family Court, Vijayawada ('Family Court, Vijayawada' for brevity). Be it noted that the said O.P. was filed by the respondent under Section 13(1)(ia) of the Hindu Marriage Act, 1955 ('the Act' for brevity) seeking decree to annul and dissolve the marriage between the petitioner and the respondent.

The necessary facts in brief are as follows. The petitioner is wife of respondent. The marriage between them was solemnized on 13.10.1995 at Gopalapuram village, West Godavari District. After that, the petitioner and the respondent admittedly set up their matrimonial home in Hyderabad. It is alleged by the petitioner that the respondent ill-treated her on the ground that she did not bring sufficient dowry by reason of which she suffered physical and mental harassment in one way or another. Ultimately, in January, 2001, the respondent left her at Gopalapuram with her parents. He also gave ultimatum that she would be taken back to Hyderabad only if she brings another sum of Rs.6,00,000/-. Her parents could not arrange such huge amount and all the efforts for conciliation failed. She is left with no option to continue with her parents at Gopalapuram. The respondent allegedly concocted a fictitious account of their marital life and filed O.P.No.388 of 2001 before the Family Court, Hyderabad for divorce under Section 13(1)(ia) of the Act. She is now required to take suitable steps to contest the O.P. Staying at Gopalapuram she is unable to prosecute the O.P. properly. Her father is an employee of Telecommunications Department at Gopalapuram and cannot afford to spare time and money for making frequent trips to Hyderabad or to finance her visits. The respondent's parents are permanent residents of Gunnampalli Village, Dwaraka Tirumala Mandal, West Godavari District, which is very close to Vijayawada. It is not only convenient if the O.P. is transferred to Vijayawada and the same would not cause any inconvenience to the respondent whereas the if the O.P. is tried in Hyderabad she would have to make frequent trips to Hyderabad. Therefore, she prayed for transfer of the O.P.

This Court while ordering notice by order dt.14.8.2001 stayed the trial in O.P.No.388 of 2001. After receiving notice the respondent filed C.M.P.No.16457 of 2001 seeking to vacate the order of stay dt.14.8.2001. He also filed elaborate counter opposing the transfer. Indeed, the learned counsel appearing for the respondent also sought to place on record a recorded audio tape allegedly containing the conversation between the respondent on one hand and Sri K.Babu Rao and Sri A.Subba Rao of Jangareddygudem, West Godavari District on the other. It is stated that K.Babu Rao is the petitioner's maternal uncle and A.Subba Rao is the former business partner of Babu Rao and both of them made phone call from a hotel room in Hospet. This Court declined permission to the learned counsel to bring the recorded tape on record as the same was not supported by separate affidavit and also for the reason that for the purpose of deciding this application for transfer the same is not relevant. The respondent in his counter-affidavit accompanying vacate stay application admits the marriage. He also says that he is highly qualified with Ph.D. in economics and he has undertaken various

projects to his credit besides acting in advisory capacity to various institutions. He also states that under his guidance the petitioner completed her Masters on Environmental Protection with the Indian Institute of Ecology and Environment, New Delhi. In spite of this the petitioner was not happy with the marriage, which was against her wishes as she was unable to compromise with the mediocre life style. The petitioner acted cruel towards him and this cruel attitude affected his mental ability and he could not perform his professional duty. He also underwent treatment for sub-conscious mind therapy and the petitioner left on her own voluntarily on 9.1.2001 and he received several abusive and threatening calls not only from her but also from her father and relatives. As there is no hope of change in the petitioner's attitude he filed O.P.No.388 of 2001 on the file of the Family Court, Hyderabad on 21.6.2001. He also states that after marriage the petitioner is in the habit of staying at Gopalapuram for spells ranging from 2 to 4 months and she was always not inclined to come back. The allegation of demand of dowry is denied. Prior to wedding, the petitioner's family was in financial doldrums and he never asked for any dowry at the time of marriage. On intervening night of 12.6.2001 and 13.6.2001 her uncle Babu Rao, and Subba Rao talked from Hospet and threatened him.

Adverting to the grounds on which the transfer is sought the respondent states that Ms.Gowri Kumari, resident of Prajay Engineering Syndicate Apartments, Secunderabad, is youngest sister of petitioner's mother and is working in Hyderabad at Bowenpally. She can as well stay with her aunt. At Vijayawada the petitioner's father has close acquaintance with political, police and goonda people. These people are notorious in indulging in physical threats or violence, psychic torture, over bearing coercion and intimidatory methods. Therefore, it will be impossible for him to take shelter under legal system for proving his case. Besides, he has parents who are under treatment under Cardiologist. Further, due to increasing threatening calls his parents have left him and living with his two brothers at Visakhapatnam and Ongole as well as sister at Kovvur. They are not living at Gunnampalli due to threats. The petitioner is staying at Gopalapuram at a distance of 360 Kms and therefore he is willing to bare the traveling charges of Rs.300/- to 500/- for every hearing. His profession does not permit him to visit the Court at Vijawada where his life would be in danger if the case is transferred to Vijayawada. The learned counsel for the petitioner Sri P.V. Sanjay Kumar while reiterating submissions in Transfer of O.P., placed reliance on the judgment of the Supreme Court in SHAKUNTALA MODI v. OM PRAKASH BHARUKA¹. He also placed reliance on the judgment of the Karnataka High Court in NANDA KISHORI v. S.B.SHIVAPRAKASH².

On the other hand, Ms. Sumalini Reddy, learned Counsel for the respondent submits that the marriage took place at Gopalapuram and the wife and husband last resided together at Hyderabad and effective oral evidence both for the petitioner and the respondent can only be brought on record at Hyderabad, where the respondent filed petition for divorce. She also submits that the petitioner and her relatives are bent upon causing harm to the respondent and therefore the respondent will not be able to effectively prosecute his case at Vijayawada. The short question that arises for consideration is whether the perceived hardship to the petitioner in prosecuting her case at the place where the respondent instituted the case for divorce can be defeated by allegations by respondent on threat perception to life.

Sections 22, 23, 24 and 25 of CPC deal with transfer of suits. As per Sections 22 and 23 where a suit may be instituted in any one of two or more Courts the defendant may at the earliest possible opportunity apply to the appellate Court to transfer the suit to another Court. Section 24 confers general power of transfer and withdrawal. The power is exercisable either on the application of the parties or suo motu by the High Court or the District Court. Under sub-section (2) of Section 24 the High Court or the District Court as the case may be is empowered to transfer or withdraw a suit subject to any special directions in the case of an order of transfer. By CPC (Amendment) Act, 1976, sub-section (5) of Section 24 is added under which a suit can be transferred to a Court which has no jurisdiction to try. In this regard, it may also be noticed that as per Section 10 of the Family Courts Act, 1984 the provisions of CPC and the Provisions of Code of Criminal Procedure will apply to civil proceedings and criminal proceedings before the Family Court respectively.

Apart from the provisions in the CPC, which apply to proceedings under the marriage laws, Section 21A of the Act enables the High Court to transfer a petition for judicial separation or for a decree of divorce in the

manner provided under Section 21A (2). Here the excerpt of Section 21A which is self-explanatory is necessary.

21A. Power to transfer petitions in certain cases:- (1) Where- (a) a petition under this Act has been presented to a District Court having jurisdiction by a party to a marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under section 13, and (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State,

the petitions shall be dealt with as specified in sub-section (2). (2) In a case where sub-section (1) applies, -

(a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court; and (b) if the petitions are presented to different district courts, the petition presented latter shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented. (3) In a case where clause(b) sub-section (2) applies, the Court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

A plain reading of sub-section (2) of Section 21A makes it clear that the power of transferring a petition under Sections 10 or 13 of the Act is governed by the provisions contained therein. As per this provision if two petitions are presented to different District Courts, the petition presented latter shall be transferred to the District Court in which the earlier petition was presented and both petitions shall be heard and disposed of together by the District Court in which earlier petition was presented. If the husband has filed a petition say for divorce and incidentally if the wife also filed a petition for restitution of conjugal rights or some other relief, the transfer of the case either by the husband or wife is permissible subject to condition that the latter case by either spouse will be transferred to the earlier case by either spouse.

Section 21A of the Act was introduced by Hindu Marriage (Amendment) Act, 1976. It has to be presumed that the Parliament was aware the earlier provisions. Therefore as per Section 19 of the Act a petition under the Act can be presented to a District Court within local limits of whose jurisdiction marriage was solemnized or the respondent at the time of petition resides or parties to the marriage last resided together. The amended Section 21A of the Act was therefore purposefully contained such provision as is noticed above. RELEVANT CASE LAW:

In B. SREELAXMI v. B.T.GURUMURTHY³ this Court has considered the effect of Section 21A of the Act and the powers of the High Court under Section 24 of CPC to transfer a case. After referring to G.VIJAYALAKSHMI v. G.RAMACHANDRA SEKHARA SASTRY⁴ and PRIYAVARI MEHTA v. PRIYANATH MEHTA⁵, SMT. RAMAKANTA v. ASHOKKUMAR⁶ this Court has laid down as under.

On the same parity of reasoning, in my view, the powers conferred on the High Court under Section 24 of the Hindu Marriage Act (sic. CPC) are not curtailed or excluded either by Section 21 and Section 21-A of Hindu Marriage Act and therefore the contention of the learned counsel for the petitioner that earlier petition under the Hindu Marriage Act cannot be transferred has no force.

I may also consider the judgment of the Supreme Court in SHAKUNTALA MODI'S CASE (supra). The husband instituted a case for custody of three children in Delhi. Wife filed an application for transfer of the case from Delhi to Dibrugarh where she had also instituted an application in the same Court earlier. Husband demurred that the transfer of the case from Delhi would cause hardship to him as he is not likely to get proper legal assistance at Dibrugarh. He did not, however, take any plea of financial difficulties and in fact he also

offered to pay expenses of wife for traveling from Dibrugarh to Delhi by air, if necessary. The Supreme Court did not accept the contentions of the husband and ordered for transfer of the case from Delhi to Dibrugarh. The relevant observations are as follows.

On an earlier occasion the respondent made an application for transfer of the Dibrugarh case to Delhi, which was rejected by this Court. The Dibrugarh case, therefore, has to be heard there. In the circumstances it is proper to transfer the Delhi case to Dibrugarh. Although it may cause the respondent some trouble of undertaking the journey to Dibrugarh but, for that reason in the facts of the present case it cannot be assumed that he will be prejudiced in prosecuting his case. If he is not in any financial difficulty, as it appears from the records and his own statement before this court, he can make an appropriate arrangement for his representation at Dibrugarh and may not remain at Dibrugarh continuously for looking after the cases.

In NANDA KISHORI CASE (supra) the husband filed case for divorce before Family Court, Bangalore. The wife approached the High Court for transferring the said case to the jurisdictional Court at Hubli as she was living there with her parents. She alleged that she has no companion to accompany her to attend the court on every date of hearing and that her aged parents are not in a position to travel along with her. She also alleged that she is under reasonable apprehension that her husband may abuse her during her visit to Bangalore in connection with her case which might endanger her life. The Karnataka High Court observed that in the absence of any statutory guidelines the power to transfer a case must be guided with the object of subserving ends of justice and the transfer of a case depends on various circumstances and that no straight jacket formula could be envisioned. The Court referred to the Judgment of the Supreme Court in MANEKA SANJAY GANDHI v. RANI JETHMALANI⁷ and laid down the following tests to be applied while considering applications for transfer in matrimonial cases.

As such, whenever Courts are called upon to consider the plea of transfer in matrimonial matters Courts have to take into consideration the economic soundness of either of the parties, the social strata of the spouses and the behavioral pattern of their standard of life antecedent to marriage and subsequent thereon and after the snap of the knot which resulted in marriage, the circumstances of either of the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance of life.

An analysis of statutory provisions and authorities cited before this Court would lead to the following principles to be applied while considering the petitions for transfer of matrimonial cases from one Court to another. (1) Section 21A of the Hindu Marriage Act, 1955 does not in any manner curtail the power of the appellate Court or the High Court under Sections 22 and 24 of CPC respectively to transfer the cases from one Court to another Court; (2) In exercise of powers under Section 24 of C.P.C. it is always open to the High Court to transfer case from one court to another court which has no jurisdiction to try it subject, however, to Court does not lack inherent jurisdiction. E.g., a matrimonial case cannot be transferred to a court of Junior Civil Judge;

(3) As observed by the Supreme Court 'prejudice in prosecuting case' to either of the spouse is relevant consideration in a Transfer application; (4) While ordering transfer of the cases, the Court should keep in mind the provisions of Section 19 of the Hindu Marriage Act for any case filed by any spouse in a place other than the places referred to in Section 19 viz., the place where the marriage was performed, the place where the respondent resides at the time of presentation of the case and/or the parties last resided. It should be remembered that Section 19 adumbrates a sound principle, in that, any matrimonial disputes can be best subjected to a fair trial in the places referred to herein;

(5) It is also relevant to take into consideration the economic soundness, the social strata and the behavioral pattern antecedent to marriage of the parties to the case while ordering transfer;

(6) While applying the above principles having a bearing on the decision, fair trial should be assured to both the parties and no party should be allowed to take advantage of the Court process;

(7) Under sub-section (2) of Section 24 the High Court transferring suit or proceeding from one Court to another may issue special directions including directions to retry the matter or proceed from the point at which it was transferred;

(8) The special directions can also include a direction to the party seeking transfer to pay a determined amount by way of defraying, living and traveling and other miscellaneous expenses, if the spouse is wife to herself and also to the companion. What would be the reasonable expenses would depend on the status and standard of living of the parties.

In this case, it is not denied before this Court that the marriage was solemnized at Gopalapuram in West Godavari District and the parties last resided at Hyderabad. It is also not disputed that the trial is not yet commenced at Family Court, Hyderabad. The petitioner has to necessarily travel either alone or with male company, be it her father or brother, whether trial is at Hyderabad or Vijayawada. Therefore, subject meeting her expenditure she cannot be said to have any hardship. On the other hand, admittedly the respondent/husband is a consultant in his field and if he is made to travel for the purpose of the case, it would certainly cause prejudice to his job. Be that as it may, at this stage, no credence can be given to the statements made by the respondent/husband in his affidavit that one Babu Rao maternal uncle of the petitioner and his business partner Subba Rao threatened him. These matters have to be gone into by the concerned Family Court. The offer made by the husband that he is willing to pay amount towards travel and living expenses to the petitioner as and when she visits Hyderabad, is also relevant consideration in this case.

After having given anxious consideration to the facts and circumstances of the case and the principles to be applied in a matter of this nature, the respondent/husband, to meet the ends of justice, should be directed to pay to and fro Second Class Three Tier Non-A.C. railway charges from Gopalapuram to Hyderabad for two adult persons, and also living expenses for three days for two persons so that without any hardship the petitioner can visit Hyderabad for prosecuting the case and also instructing her counsel. An amount of Rs.500/- for three days for living expenses in addition to actual railway charges for two persons would be reasonable. The petitioner is not entitled for any other relief in this petition.

In the result, subject to above observations and directions, the Tr.C.M.P. is disposed of without any order as to costs.

?1 AIR 1991 SC 1104

2 AIR 1993 Karnataka 87

3 1998 (6) ALT 819

4 AIR 1981 SC 1143

5 AIR 1980 BOMBAY 337

6 AIR 1977 P&H 373

7 AIR 1979 SC 468