

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT
HYDERABAD**

Tr. CRIMINAL PETITION No. 40 of 2021

Between:

Nerella Swapna
... Petitioner

AND

Nerella Venkatesh & others
... Respondents

DATE OF JUDGMENT PRONOUNCED: **05.01.2022**

SUBMITTED FOR APPROVAL:

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes
3. Whether His Lordship wish to
see the fair copy of the Judgment? yes

LALITHA KANNEGANTI, J

*** HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

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Between:

Nerella Swapna

... Petitioner

AND

Nerella Venkatesh & others

... Respondents

! Counsel for Petitioner

: Mr. Mohd. Ghulam Rasool

^ Counsel for Respondents

: Mr.D. Suresh Kumar

< Gist:

> Head Note:

? Cases referred:

- 1) (2018) 7 SCC 339
- 2) (1979) 4 SCC 167

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

Tr. CRIMINAL PETITION No. 40 of 2021

ORDER:

This Petition is filed to transfer D.V.C. No. 19 of 2021 from the Court of IV Metropolitan Magistrate at Nampally, Hyderabad to the Courts of Ranga Reddy District either at L.B. Nagar or Kukatpally.

2. The case of the petitioner is that her marriage took place with Respondent No.1 on 10.04.2019 at Jamalapuram, Khammam District as per Hindu Rites and Customs and the marriage was consummated. At the time of marriage, Rs.40,00,000/-, 36 tulas of gold jewellery and 2 kgs. of silver was given towards dowry. She joined her husband in matrimonial home at Gampalagudem and living with her family. Thereafter, respondents started harassing her for additional dowry and respondent No.1 was avoiding to have physical relation with her as he had illicit affair with other women. It is stated that mother-in-law of petitioner took her gold jewellery and kept with her. It is stated that due to domestic violence, petitioner filed D.V.C.No. 19 of 2021 before the Court below.

3. Learned counsel for petitioner submits that while proceedings were going on, the learned IV Metropolitan Magistrate, Hyderabad has passed adverse comments against petitioner and considered the submissions of counsel for respondents smoothly, thereby, committed procedural irregularities. He further submits that there is no possibility of conducting fair and impartial trial,

hence, petitioner has lost confidence and filed the present Petition for transfer of DVC from that Court.

3. It is submitted that the learned Metropolitan Magistrate has passed the following docket orders:

Dt: 09.07.2021

Both counsels present virtually through Jitis Meet App. Counsel for respondent filed counters in CrI.M.Ps. 36/21, 38/21 & amp 39/21. However, on perusal of record, it comes to light that counter in CrI.M.P.No. 39/21 was already filed on 02.07.2021. Hence, it was returned. The counsel for the aggrieved person submitted that the respondent has not served the copies of the counter to them. It appears that they have submitted the copies in the Court. Aggrieved person is directed to collect the copies of counters from the Court. Further, no counter was filed by R1 to R5 in the main case. For counter of R1 to R5. In the meanwhile, call with CrI.M.P.No. 36/21, 38/21 & amp; amp 39/21 on 19.07.2021.

Notice.

19.07.2021.

Date: 19.07.2021

Aggrieved person and counsel for R1 to R5 present. Counsel for R1 to R5 submitted that they have filed counter in the main case on the last occasion but the Court had returned it on the misconception but it was the counter in CrI.M.P.No. 39/21. Counter is filed by R1 to R5. In the meanwhile, call with CrI.M.Ps. 36/21, 38/21 & amp; amp 39/21. Aggrieved person filed an affidavit seeking permission to report her case as party in person. Aggrieved person submitted that she is not willing to proceed with the counsel on record and would like to represent her case by herself. Aggrieved person is permitted to report her case as party-in-person after considering the circumstances mentioned.

Call on 28/07/2021.

Notice.

28.07.2021”

4. It is submitted that there is confusion with regard to filing of the counters in the main DVC and MPs. Learned counsel for the petitioner relied on the judgment of the Apex Court in

Sarasamma @ Saraswathiyamma v. State represented by Deputy Superintendent of Police and others¹, wherein the Apex Court has observed that respondent – accused is a influential person and is supposed to have an iron grip over 15 villages around the area which is indicative of possible influence over the men and machinery in the area and as such the petitioner could make out a case for transfer and accordingly, the petition was allowed. Learned counsel submits that the judgment squarely applies to the facts of the case and the transfer petition may be allowed.

5. It is also submitted that with this kind of orders passed by the learned Judge, petitioner has lost confidence in the Court and on that ground alone, the case has to be transferred to the other Court. Learned counsel also submitted that the respondent is an influential person, always threatening the petitioner as well as the witnesses and also presiding officer showing favoritism to the respondents, hence, there is no scope for fair trial before the present Court and as petitioner is residing at Dilsukhnagar, Hyderabad, the case is liable to be transferred.

6. Learned counsel appearing for the respondents submits that the petitioner absolutely could not make out any grounds seeking transfer of the case. It is submitted that the petitioner ought to have stated the reasons and the reasons, so stated, are invented for the purpose of filing the petition. Basing on such frivolous allegations, the case cannot be transferred from one Court to other Court.

¹ (2018) 7 SCC 339

7. Having heard the counsel on either side, perused the material on record.

8. In the docket order dated 09.07.2021, it is observed that no counter was filed by R1 to R5 in the main case and in CrI.M.Ps. 36/21, 38/21 & amp 39/21 the counters were filed and CrI.M.P.No. 39/21 was returned as it was already filed on 02.07.2021. Hence, the aggrieved party is directed to collect the same from the Court. The matter was adjourned to 19.07.2021 for counters of R1 to R5. On the next date of hearing i.e. on 19.07.2021, as per the docket proceedings, it is observed that R1 to R5 have filed their counter in the main case, but, the same was returned on the misconception that it was the counter in CrI.M.P.39/21. Then the Court has directed to call with CrI.MPs. 36/21, 38/21 & amp;amp 39/21. The Court has further observed that aggrieved person is not willing to proceed with the counsel on record and would like to represent by herself. Aggrieved person is permitted to report her case as party-in-person after considering the circumstances mentioned.

9. Basing on these two orders, learned counsel for the petitioner tried to impress upon the Court that the Presiding Officer has committed grave mistake and that the petitioner herein has lost hope in the learned Judge and that there is no likelihood of getting justice from the Court.

10. This Court is not able to appreciate the contention of the petitioner and finds no merit in the said contentions. Petitioner could not even able to state what is the prejudice caused to her. Further, when the party has chosen to attribute *mala fides* and

also trying to create aspersions on the judicial officer, there should have been compelling reasons. If these kind of frivolous petitions are entertained, dispensation of justice would become a herculean task for them.

11. Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate when - the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

One of the common circumstances alleged in applications for transfer is the avoidance of substantial prejudice to a party or witnesses on account of logistics or like factors, especially when an alternative venue will not seriously handicap the complainant and will mitigate the serious difficulties of the accused. In the present case the petitioner claims that both the parties reside in Delhi and some formal witnesses belong to Delhi;

but the meat of the matter, in a case of defamation is something different. The main witnesses are those who speak to having read the offending matter and other relevant circumstances flowing therefrom. They belong to Bombay in this case and the suggestion of the petitioner's counsel that Delhi readers may be substitute witnesses and the complainant may content herself with examining such person is too presumptuous for serious consideration.

Maneka Sanjay Gandhi v. Rani Jethmalani²

12. It is well-established principle that trial should take place in a fair and transparent manner and justice should not only be done but also seems to have been done. When the petitioner comes before the Court pleading that he cannot get justice objectively and without bias, he should plead and place credible material on record. Based on conjectures, surmises, petitions cannot be entertained. Further, there cannot be any hard and fast rule for transferring a case from one Court to the other as it all depends on the facts and circumstances of each case. If these kind of petitions are entertained casting unjustified aspersions on the Court, it will affect the judicial administration. Though, initially, this Court was inclined to dismiss the petition with exemplary costs, considering the submission of the learned counsel for the petitioner, taking a lenient view, this Transfer Petition is dismissed, however, without costs.

LALITHA KANNEGANTI, J

5th January 2022

Note:
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² (1979) 4 SCC 167

