

IN THE HIGH COURT FOR THE STATE OF TELANGANA

Tr.C.M.P.No.504 of 2023

Between:

Smt Bijjala @ Pillamari Thamika,

W/o Pillamari Vivek

... Petitioner

And

Pillamari Vivek, S/o Pillamari Venkateswarlu

... Respondent

JUDGMENT PRONOUNCED ON 12.02.2024

HON'BLE JUSTICE LAXMI NARAYANA ALISHETTY

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No
3. Whether her Lordship wishes to
see the fair copy of the Judgment? : Yes/No

JUSTICE LAXMI NARAYANA ALISHETTY

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< Gist:

> Head Note:

! Counsel for the Petitioner: Sri Madiraju Prabhakar Rao

^ Counsel for Respondent: Sri T.Bala Mohan Reddy

? Cases Referred:

1. (2025) 11 SCC 447
2. 2022 SCC Online SC 1199
3. 2023 SCC Online Bom 1926
4. 2003 SCC Online Bom 1982

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY**Tr.C.M.P.No.504 of 2023****ORDER:**

This Transfer Civil Miscellaneous Petition is filed seeking transfer of F.C.O.P.No.424 of 2023 from the file of the Judge, Family Court at Hanmakonda, filed by the respondent-husband, to the Court of the Judge, Family Court at Khammam.

2. The brief facts leading to filing of the present Tr.C.M.P. are that the marriage of the petitioner-wife was solemnized with the respondent-husband on 02.09.2018 at Maddi Yellareddy Function Hall, By-pass road, Khammam, as per the prevailing customs in their community. It is stated that out of their wedlock, they were blessed with a female child on 24.02.2020.

3. In view of the harassment and differences, the petitioner filed a complaint against the respondent before the Police, Women Police Station, Khammam, *vide* FIR No.97 of 2023, dated 04.11.2023, for the offences punishable under Sections 498-A and 506 r/w Section 34 I.P.C and Sections 3 and 4 of Dowry Prohibition Act. The respondent filed FCOP No.424 of 2023 on

the file of the Judge, Family Court, Hanmakonda, under Section 13(1)(ia) of the Hindu Marriage Act, 1955, to grant divorce by dissolving the marriage solemnized on 02.09.2018. In the meanwhile, the petitioner filed a Domestic Violence Case *vide* DVC (SR) No.3240 of 2023 before the III Additional Judicial First Class Magistrate at Khammam and Maintenance Case *vide* M.C.No.122 of 2023 before the Judge, Family Court-cum-IV Additional District Judge at Khammam, and the said cases are pending adjudication.

4. It is stated that in view of the strained relationship between the petitioner and the respondent, the petitioner cannot travel alone from Khammam to Hanmakonda and there is a threat to her life. It is further stated that for every hearing, the petitioner has to take assistance from her family members, which is very difficult. Further, the cases filed by the petitioner i.e., Domestic Violence Case and Maintenance Case are pending before the Courts at Khammam. Hence, prayed to transfer F.C.O.P.No.424 of 2023, which is filed by the respondent, from the Court at Hanmakonda to Khammam.

5. Heard Sri Madiraju Prabhakar Rao, the learned counsel for the petitioner and Sri T. Bala Mohan Reddy, the learned counsel for the respondent. Perused the record.

6. Learned counsel for the petitioner would submit that the petitioner is a homemaker and that she does not have any income and that she is dependent on her parents for her survival. He also submits that it is difficult for the petitioner to look after the minor child and attend the Court at Hanmakonda on every date of hearing and that the distance between Khammam and Hanmakonda is more than 100 K.Ms. He further submits that the other cases i.e., Domestic Violence Case and Maintenance Case filed by the petitioner are pending in the Courts at Khammam. Therefore, he prayed to transfer the F.C.O.P. filed by the respondent to the Family Court at Khammam in order to avoid multiplicity of litigation. He further contended that in the transfer proceedings of matrimonial disputes, the convenience of the wife has to be considered vis-à-vis the convenience of the husband, and therefore, the request of the petitioner-wife needs to be considered. In support of the said contentions, the learned

counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in *Gargi Konar v. Jagjeet Singh*¹.

7. On the other hand, the learned counsel for the respondent would submit that the respondent filed F.C.O.P.No.424 of 2023 seeking divorce in June, 2023, whereas the petitioner filed M.C.No.122 of 2023 in December, 2023, and the Domestic Violence Case filed by her is not yet numbered. Therefore, it is clear that the petitioner has filed the Maintenance Case and Domestic Violence Case subsequent to the filing of the F.C.O.P. by the respondent. Therefore, prayed to dismiss the Transfer C.M.P.

8. In *Gargi Konar's case* (1st cited supra), which was relied upon by the learned counsel for the petitioner, the Hon'ble Supreme Court held as under:

"The only ground made out in the transfer petition by the petitioner wife is that she is a helpless woman fully dependent upon her father and that her financial capacity is not such so that she can contest the proceedings in Bhatinda in the State of Punjab.

In our view, this is not a ground for transfer at all. The respondent can be directed to pay for her and her companions,

¹ (2005) 11 Supreme Court Cases 447

to-and-fro and stay, expenses on every occasion on which she is required to travel. The Additional Civil Judge before whom the case is pending is directed to quantify the amount and to ensure that the same is paid to her on every occasion that she is required to remain present in the court. With these directions, the transfer petition stands dismissed."

9. The facts of the said case and the facts of the present case are different and thus, the above judgment has no application to the present case.

10. The Hon'ble Supreme Court in *NCV Aishwarya Vs A.S.Saravana Karthik Sha*² held as follows:

"9. The cardinal principle for exercise of power under Section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socio- economic paradigm in the Indian society, generally,

² 2022 SCC Online SC 1199

it is the wife's convenience which must be looked at while considering transfer."

11. The principle of law laid down by the Hon'ble Supreme Court in *N.C.V.Aishwarya's case (2nd cited supra)*, has been reiterated by the High Court of Bombay in *Devika Dhiraj Patil Nee Devika Jayprakash Buttepatil v. Dhiraj Sunil Patil*³, and observed as under:-

"In a country like India, important decisions such as marriage, divorce are still taken with the guidance and blessings of elders in the family. For a lady to travel alone for the proceedings to a Court where the fate of her marriage is going to be decided without any family member would definitely be a matter of concern and cause not only physical inconvenience but also emotional and psychological inconvenience

12. Further, the High Court of Bombay in *Priyanka Rahul Patil v. Rahul Ravindra Patil*⁴ followed the principle laid down in *N.C.V.Aishwarya's case (2nd cited supra)* and *Devika Dhiraj Patil Nee Devika Jayprakash Buttepatil's case (3rd cited supra)*, and held as follows:-

³ (2023 SCC OnLine Bom 1926)

⁴ (2023 SCC OnLine Bom 1982)

“The underlying principle governing the proceedings under Section of the CPC, is that convenience of the wife is to be preferred over the convenience of the husband.”

13. Thus, there are catena of decisions of the Hon’ble Supreme Court and other High Courts to the effect that in matrimonial matters/disputes, while considering the application for transfer of the proceedings from one Court to another Court, the Courts must prefer the convenience of the wife over the convenience of the husband.

14. In the present, case, a perusal of the record discloses that the petitioner is seeking transfer of the F.C.O.P. filed by the respondent from the Family Court, Hanumakonda, to the Family Court, Khammam, on the ground that she is a homemaker and she is dependent upon her parents and has to look after the welfare of her child aged four years and therefore, it is difficult for her to travel from Khammam to Hanmakonda on every date of adjournment. Further, for every hearing, she has to take assistance from her family members.

15. Also, it is relevant to note that the cases *viz.*, MC and DVC between the parties are pending before the Courts at Khammam,

whereas FCOP filed by the respondent-husband is pending before the Court at Hanmakonda.

16. Therefore, in the facts and circumstances of the case and in the light of the principle laid down in the aforesaid decisions, this Court is inclined to accede to the request of the petitioner-wife seeking transfer of the case.

17. Accordingly, this Transfer C.M.P. is allowed and F.C.O.P.No.424 of 2023 pending on the file of Judge, Family Court, Hanmakonda, is withdrawn and transferred to the file of the Judge, Family Court, Khammam, for disposal in accordance with law.

18. The learned Judge, Family Court, Hanmakonda, shall transmit the entire original record in F.C.O.P.No.424 of 2023 duly indexed, to the Court of the Judge, Family Court, Khammam, preferably within a period of one month from the date of receipt of a copy of this order.

19. Pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

LAXMI NARAYANA ALISHETTY, J

Date: 12.02.2024
va/dr