

THE HON'BLE Ms. JUSTICE B.S.BHANUMATHI

Transfer Criminal Petition Nos.16 & 17 of 2020

COMMON ORDER:

These two Transfer Criminal Petitions, under Section 407 CrPC, are filed seeking transfer of C.C.No.37 of 2019 and M.C.No.10 of 2018 on the file of the Court of Judicial First Class Magistrate, Aluru, Kurnool District respectively, to the file of the Court of Judicial First Class Magistrate, Guntakal, Anantapur District.

2. Transfer Criminal Petition No.16 of 2020 is filed by petitioners/accused 1 to 3 in C.C.No.37 of 2019, whereas, Transfer Criminal Petition No.17 of 2020 is filed by petitioner No.1/accused No.1/husband alone. Since these two petitions arise out of a matrimonial dispute between the same parties, they are heard together and are being disposed of by this common order.

3. Heard *Sri Harish Kumar Rasineni*, learned counsel for the petitioners. In spite of service of notice, there is no appearance on behalf of the 2nd respondent/*de facto* complainant.

4. The facts, in brief, leading to filing of these two petitions, are that the marriage of the 2nd respondent/*de facto* complainant with the 1st petitioner on 22.08.2004 and that at the time of marriage, the parents of the *de facto* complainant gave dowry in a sum of

Rs.40,000/- and other gold ornaments. It is alleged that the 2nd respondent was harassed by mother-in-law, sister-in-law and others for additional dowry. Further, the 1st petitioner left the 2nd respondent at her house on 05.02.2018 and thereafter, did not take her back to the matrimonial home. Counseling was held before the police regarding visitation rights of the children, who are now aged 13 years and 12 years respectively. Thereafter, the 1st petitioner sent a notice for divorce. After the marriage, the 1st petitioner and the 2nd respondent lived together for a period of eight (8) years and after a period of 14 years of the marriage, the 2nd respondent lodged complaint and the police after investigation filed charge sheet, which was numbered as C.C.No.37 of 2019 on the file of the Judicial First Class Magistrate, Aluru. The petitioner also filed HMOP No.103 of 2018 on the file of the Court of Additional Senior Civil Judge, Anantapuram, wherein, the learned Additional Senior Civil Judge, by orders, dated 12.09.2018, dissolved the marriage between the 1st petitioner and the 2nd respondent.

(b) The brother of the 2nd respondent is in active politics and leader of a political party. The 2nd respondent has also filed M.C.No.10 of 2018 on the file of the Court of Judicial First Class Magistrate, Aluru, on 30.10.2018, for grant of maintenance of Rs.20,000/- per month.

(e) Both the aforesaid cases, viz., C.C.No.37 of 2019 and M.C.No.10 of 2018 are pending on the file of the Court of Judicial First Class Magistrate, Aluru, Kurnool District, and are coming up for trial and enquiry. The Court at Aluru is situated at a distance of 15 Kms from the village of the 2nd respondent. The Court at Guntakal, Anantapuram District, is at equal distance to the 2nd respondent from her village. The 2nd respondent has ample modes of transport at all times to travel to Guntakal, for attending the case. However, the petitioners have no other alternative except to travel through the village of the 2nd respondent to attend the Court at Aluru, where, the brother of the 2nd respondent and others are intimidating and threatening the petitioners. They are having life threat in the hands of the 2nd respondent and her brother. The said fact was also brought to the notice of the learned Judicial First Class Magistrate, Aluru, by memo, dated 10.01.2020, in M.C.No.10 of 2018. Further, C.C.No.37 of 2019 is at the stage of commencement of trial. Thereafter, transfer of both the cases may not cause any prejudice to the 2nd respondent. Hence, these two transfer criminal petitions are filed.

5. Both the petitions are filed mainly on the ground that it is difficult for the petitioners to travel from their place of residence to the place of Court as the brother of the 2nd respondent who is active in politics is attacking and such an incident was also reported to the

concerned Court at Aluru through a memo, dated 10.01.2020 in M.C.No.10 of 2018. It is also contended that even if the case is transferred from the Court at Aluru, Kurnool District to the Court at Guntakal of Anantapuramu District, the 2nd respondent will not be put to any hardship as the distance she has to travel from her place of residence to the Court at Aluru or Guntakal would almost be the same. Moreover, according to the petitioners, the 2nd respondent is attending anyhow, before a Court in Anantapuram District in relation to petition filed for divorce by the 1st petitioner against the 2nd respondent and thus, no hardship would be caused to her.

6. As can be seen from the memo of evidence enclosed to the charge sheet in C.C.No.37 of 2019, most of the witnesses are residents of Kurnool District, and as such, it would cause difficulty for the witnesses in case of transfer. Mere threat of attack without there being any real danger, transfer of a case need not be made. Just because a memo was filed before the learned Magistrate, it is not proof enough to imply danger to the petitioners. Even after submission of memo, no incident is said to have occurred. If at all, the attitude of the party is not proper, change of place of Court would not help, in the absence of clinching evidence, and such a change in place would help in mitigating the possibility of danger to the petitioners. If at all, there is any difficulty to the petitioners, they can take recourse to appropriate provisions of law in seeking

dispensation of their presence before the Court unless their physical presence is required. As such, there are no merits in the petitions.

7. Accordingly, both the Transfer Criminal Petitions are dismissed being devoid of merit.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

07th September, 2022
RAR

B.S BHANUMATHI, J