



IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

TRANS CMP No. 58 of 2019

Between:

Kaligithi Priyanka,
Wife of Javudula Rajeev Gandhi, Hindu, 31 years,
Occ. Housewife, R/o. Door No. 19-15-39/6, Bank Colony,
Near Lutheran Church, Bhimavaram,
West Godavari District.

... PETITIONER

AND

Javudula Rajeev Gandhi,
s/o. Late Raja Rao, Hindu, aged 35 years,
Occ. Sr. Sec. Engineer in East Coast Railway,
Waltair, R/o. D.No.49-20-6/3/10,
Flat No. 202, Tirumala Height Apartment,
Rama Krishna nagar, Near Thondam Vinayaka Temple,
Akkayyapalem, Visakhapatnam

... RESPONDENT

DATE OF JUDGMENT PRONOUNCED: 18.12.2019

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

1. Whether Reporters of Local Newspapers
May be allowed to see the order? Yes/No
2. Whether the copy of order may be
Marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to
See the fair copy of the order? Yes/No

M.VENKATA RAMANA,J



MVR

TR.CMP.No.58 of 2019:APHC:27185

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***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

+ TR.CMP.No. 58 of 2019

% Dated:18-12-2019

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Kaligithi Priyanka,
Wife of Javudula Rajeev Gandhi, Hindu, 31 years,
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... APPELLANT

AND

\$ Javudula Rajeev Gandhi,
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Flat No. 202, Tirumala Height Apartment,
Rama Krishna nagar, Near Thondam Vinayaka Temple,
Akkayyapalem, Visakhapatnam

... RESPONDENT

! Counsel for appellant : Mr. Yallabandi Ramatirtha

^Counsel for Respondents : None

<GIST :

>HEAD NOTE:

? Cases referred:

1. AIR (2) ALT 1
2. 2013(1) ALD, 673
3. AIR 1992 AP 190



HON'BLE SRI JUSTICE M.VENKATA RAMANA

TRANS.CMP.No. 58 of 2019

ORDER:

This petition is filed under Section 24 of CPC to transfer O.P.No.973 of 2018, now pending on the file of the Court of Additional Family Judge, Visakhapatnam, to the Court of learned Senior Civil Judge, Bhimavaram.

2. The petitioner is the wife of the respondent. Their marriage was solemnized on 26.06.2011. Apparently, disputes arose between this couple. The petitioner is now residing at Bhimavaram. Whereas the respondent is a resident of Visakhapatnam.

3. The respondent has instituted O.P.No.973 of 2018, on the file of the Court of learned Additional Family Judge, Visakhapatnam, for dissolution of marriage, setting out several grounds, against the petitioner. The petitioner has also filed M.C.No.65 of 2018 on the file of the Court of learned II-Additional Judicial Magistrate of First Class, Bhimavaram, under section 125 Cr.P.C., for grant of maintenance for her and her children. It is stated to be pending. Apart from that, the petitioner has also filed a complaint in I-Town Police Station, Bhimavaram, against the respondent, making certain allegations, including as to alleged intimacy of the respondent and one Smt. Sagar Devi, where FIR is registered in Cr.No.255 of 2018, on 15.07.2018. Investigation in this case is stated to be continuing. She also filed a complaint under The Protection of Women from Domestic Violence Act,2005, before the court of II-Additional Judicial Magistrate of First Class, Bhimavaram, against the respondent.



4. Now, the difficulty expressed by the petitioner is, to attend the court at Visakhapatnam, on the dates of hearing, from Bhimavaram, on account of her financial difficulties. She also pointed out that the distance between these two places is 220 Kms. She also alleged that there is a threat to her life, if she attends the court at Visakhapatnam, from the respondent. Thus, stating, she requested transfer of the above O.P.No.973 of 2018 from Visakhapatnam to the competent court at Bhimavaram.

5. Sri Yallabandi Ramatirtha, learned counsel for the petitioner, submitted arguments, assisting the court, clarifying the legal position. The respondent is served notice. None represented him, in this matter.

6. In this backdrop, the question now emerges is – “whether a matrimonial dispute pending before a civil Court of competent jurisdiction be transferred in terms of Section 24 CPC to the Family Court or vice-versa?

7. In as much as, the respondent did not choose to contest the matter, the reasons so assigned by the petitioner have to be taken into consideration, since they remained uncontroverted. However, difficulty felt in considering the request of the petitioner, on account of the judgment of one of the learned Judges of this Court in ***Chakradharamahanthi Venkata Maikya Prasuna v. C.Venkata Rama Murthy and batch of cases***¹. Certain guidelines are settled in the above ruling, after elaborate discussion of effect of Section 24 CPC, various precedents, different provisions of Family Court Act, including constitutional provisions, as to

¹.2019(2)ALT 1



access to justice, fair trial and certain international covenants, which have bearing *vis-a-vis* judicial proceedings. Constitutional provisions have been invited into the arena of family disputes in this ruling. Nonetheless, the observations, so recorded, in the above ruling of this court since have certain bearing in the matters, particularly, in the interests of posterity, it is now being discussed hereunder.

8. One of the guidelines in the above ruling is that, matrimonial cases pending on the file of Judge, Family Court, shall not be withdrawn and transferred to the Court of Senior Civil Judge, as the jurisdiction of the civil Court is ousted by Section 8 of the Family Courts Act.

9. Power of this Court in terms of Section 24 CPC is exhaustively considered in the above ruling, particularly, in Para-100, observing that the family Court is a court subordinate to High Court and that the power of the High Court to transfer a proceeding from the Family Court to any other District Court or from the District Court to the Family Court cannot be said to have been excluded or restricted. Thus, it is stated that the power of High Court in terms of Section 24 CPC to transfer matrimonial proceedings is, to transfer from one family Court to another family Court or from Family Court to District court or from District Court to Family Court. Transfer of matrimonial cases from the family court to a civil court having such jurisdiction held impermissible. Basis for such conclusion in this ruling, is the hierarchal differentiation of the Court of Family Judge and other equally competent Court viz., the Senior Civil Judge. In the sense, the cadre to which the presiding officer of family Court being a District Judge is considered attaching significant importance and the Court of Senior Civil Judge, where, the presiding officer, usually, is a Senior Civil Judge, who is inferior to the cadre of District Judge. The provisions of



Family Court Act, which govern functioning of family Court, are also considered in this ruling, pointing out that, they stand differently than what the courts of Senior Civil Judges follow procedurally, in the matrimonial disputes.

10. However, it appears that earlier ruling of this Court when at Hyderabad in ***V. Sailaja vs. V. Koteswara Rao***², in the same context, was not brought to the notice of the learned Judge. This ruling, in turn, relied on earlier decision of this court in *P.Jayalakshmi vs. K. Revichandran*³. There is also elaborate discussion in *Sailaja's* case, referred to supra, in respect of jurisdiction of family Court *vis-à-vis* a Court of ordinary civil Jurisdiction, conferred with jurisdiction to decide the matrimonial matters. It is desirable to extract hereunder the relevant observations in *Sailaja's* case, for benefit, in Paras-13 to 16.

"13. On a plain reading of the provisions of Sections 7 and 8 of the Family Courts Act, it is clear that in respect of the matters which are enumerated in the Explanation to Section 7, the Family Court shall exercise all the jurisdiction exercisable by any District Court or any subordinate Civil Court. The Family Court shall also exercise the jurisdiction of the Magistrate of I Class in respect of a proceeding for maintenance filed under Chapter IX of the Code of Criminal Procedure, 1973. While so, Section 8 of the Act excludes the jurisdiction of Civil Courts/Magistrates of I Class in such of the Districts where Family Courts are constituted under the Family Courts Act.

14. On a careful reading of the language used in Section 8, I am of the opinion that the exclusion contemplated under Section 8 of the Act is only limited to the Districts where a Family Court is already constituted under the Family Courts Act, in which case, the jurisdiction of the Civil Courts in such Districts in respect of the matters which are mentioned in the Explanation to Section 7 of the Family Courts Act gets ousted. But, in places where Family Court is not constituted, then the said exclusion contemplated under Section 8 is not applicable to the Civil Courts which are functioning in such places. In such cases, the local Civil Courts will continue to exercise the jurisdiction in respect of all matrimonial matters.

15. Coming to the power of the High Court under Section 24 C.P.C., as already stated, the High Court has got unquestionable power to transfer

².2003(1) ALD, 673

³.AIR 1992 AP 190



cases from one Court to the other Court. Similarly, as the Family Court is also a Court subordinate to the High Court and is subject to the provisions of the Code of Civil Procedure, the High Court is empowered under Section 24 of the C.P.C. to transfer cases from one Family Court to the other Family Court.

16. But, the question in this case is whether this Court can transfer a case from the file of a Family Court to a Civil Court. As already stated, in the absence of constitution of a Family Court, the Civil Court is empowered to exercise jurisdiction in respect of matrimonial cases, by virtue of the provisions of Section 8. Therefore, in places where Family Court is not established, as the local Courts are vested with the jurisdiction to deal with matrimonial cases, such local Courts are competent to try the matrimonial cases of the nature which are mentioned in the Explanation to Section 7 of the Family Courts Act. In such a case, there may not be any bar under Section 8 of the C.P.C. from transferring the cases pending in a Family Court to such Civil Courts. Therefore, this Court in exercise of its jurisdiction under Section 24 of the C.P.C., can transfer cases which are instituted in a Family Court to the Courts within whose local jurisdiction no Family Court is constituted."

11. A reference is also made to the observations in *P.Jaya Lakshmi vs. K. Revichandran* referred above in para-17 of this ruling and, they are:

"17.

"Section 8 lays down that where a Family Court has been established for any area, no District Court or Subordinate Civil Court will have or exercise any jurisdiction in respect of any suit proceeding of the nature referred to in the explanation to Subsection (1) of Section 8. Under Clause (b), the Magistrates in that area will cease to have jurisdiction regarding matters governed by Chapter IX of Cr.P.C. It is significant to remember that the exclusion of jurisdiction is limited to the area for which the Family Court is constituted. The words used are 'such area'. In view of the wording of Section 8 the exclusion of jurisdiction for the Civil and Criminal Court is confined to area for which Family Court is constituted and there are no words indicated that the parties to that proceedings are prohibited from approaching any other Court outside the jurisdiction of the Family Court. Section 20 of Family Courts Act indicate that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any law for the time being in force or any instrument having effect by virtue of any law other than this Act

A harmonious interpretation of Sections 3, 7, 8 and 20 clearly indicates that there is no bar against the parties from approaching other Courts outside the jurisdiction of the Family Court. The exclusion of the jurisdiction of the Courts is confined to the area over which the Family Court exercises jurisdiction...."

For the foregoing reasons, I see no merit in the contention advanced on behalf of the respondent."

12. When there are courts, equally competent to consider and determine the matrimonial disputes, which have jurisdiction either under Hindu Marriage Act or any other law applicable it is rather difficult to draw



any such distinction only on the premise of hierarchal differentiation among the cadres of the presiding officers manning either the family Court or the court of ordinary civil jurisdiction conferred with matrimonial jurisdiction.

13. In the light of this situation when right to justice is of primordial consideration, when a party requests transfer of his/her matter either from the Family court to court of ordinary civil jurisdiction, enjoying equal competence and efficacy similarly to apply the same provisions of substantive and procedural laws, it cannot be stated that such request shall be confined to a Court of equal status in hierarchal system prevalent in the State or in the country.

14. In this respect, I prefer to rely on the observations in *Sailaja's case* referred to supra than *CVM prasuna's case* referred to above.

15. Therefore, on such basis, when the facts in this case are considered, it is just and appropriate that O.P.No.973 of 2018 pending on the file of the Court of learned Additional Family Judge, Visakhapatnam be transferred to the Court of learned Senior Civil Judge, Bhimavaram. Interests of justice also warrant this course of action.

16. In the result, the Tr.CMP is allowed. O.P.No.973 of 2008, now pending on the file of the court of learned Additional Family Judge, Visakhapatnam, is withdrawn and is transferred to the Court of learned Senior Civil Judge, Bhimavaram for disposal in accordance with law. No costs.

As a sequel, all pending miscellaneous petitions, shall stand closed. Interim Order, if any, shall stand vacated.



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I place on record appreciation and the invaluable assistance offered by Sri Yellabandi Ramatirtha, learned counsel for petitioner, in this process. Copy of this order be furnished to Sri Y.Ramatirtha, learned counsel for the petitioner, by the Registry, for his reference.

JUSTICE M.VENKATA RAMANA

Dt: 18.12.2019.

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TR.CMP.No.58 of 2019:APHC:27185

HON'BLE SRI JUSTICE M.VENKATA RAMANA

TR.CMP.No. 58 OF 2019

DATE: 18-12-2019

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