

Mamta Gupta Vs. Mukund Kumar Gupta

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Court : Andhra Pradesh

Decided On : Mar-29-2000

Reported in : 2000(3)ALD285; 2000(3)ALT211; II(2000)DMC403

Judge : G. Bikshapathy, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 22, 23, 24, 25, 151; [Hindu Marriage Act, 1955](#) - Sections 9 and 21-A; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 125 and 406; [Indian Penal Code \(IPC\), 1860](#) - 498-A

Appeal No. : Tr.CMP Nos. 216 and 217 of 1999

Appellant : Mamta Gupta

Respondent : Mukund Kumar Gupta

Advocate for Def. : Mr. C.B. Rama Mohan Reddy, Adv.

Advocate for Pet/Ap. : Mr. Pratap Narayan Sanghi, Adv.

Judgement :

1. Both these Tr. CMPs, can be disposed of by a common judgment.
2. The petitioner is the wife, who filed both the petitions. She filed Tr.CMP No.216 of 1999 to transfer OS No.39 of 1998 pending on the file of Family Court, City Civil Court, Hyderabad, to the file of Family Court, Indore and Tr.CMP No.217 of 1999 is filed to transfer O.P. No. 201 of 1998 pending on the file of Family Court, City

Civil Court, Hyderabad to the file of Family Court, Indore. The respondent-husband filed OP No.201 of 1998 for divorce and the suit OS No.39 of 1998 for permanent injunction. Both the matters are pending on the file of Family Court, Hyderabad.

3. Though the facts leading to the marriage between the petitioner and the respondent was narrated at length, they are not necessary for the purpose of deciding the issue involved in these cases. As far as these petitions are concerned, the petitioner states that the marriage was solemnised between the petitioner and the respondent in the year 1996, OP was filed by the respondent-husband seeking divorce. It is also her case that she also filed a criminal case against the respondent and his family members which is pending in CC No.213 of 1998 on the file of Judicial First Class Magistrate, Indore. Similarly, CC No.13 of 1998 is also pending on the file of the said Court. It is also her case that her two brothers and her parents are residing separately and she is being looked after by her aged parents and it would not be convenient to her to attend the Court at Hyderabad. That on a previous occasion when the petitioner attended the Court at Hyderabad, she was threatened with dire consequences by the respondent and some unsocial elements at the instance of the respondent, and therefore both the matters be transferred to the file of Family Court, at Indore in the interest of parties.

4. On the other hand, in the counter filed by the respondent-husband he has denied the averments made in the petitions seeking transfer of the cases from Hyderabad to Indore. It is also stated in the counter that the petitioner had only attended the Court once and the alleged threat of dire consequences was only a make belief averment and there was no substance in the contentions raised by the petitioner. It is also stated that the petitions are not maintainable as this Court has no jurisdiction to transfer the matters to the Court under the jurisdiction of another High Court and the petitioner has to only approach the Supreme Court under Section 25 of CPC seeking such a transfer.

5. The undisputed facts are that the respondent-husband filed petitions for divorce and also a suit for injunction and both the cases are pending on the file of Family Court at Hyderabad, while the petitioner wife had also filed criminal cases against

the respondent and his family members which are pending on the file of Judicial Magistrate, First Class, Indore.

6. The main question that calls for consideration in this case is whether the case pending on the file of the Family Court, Hyderabad which are subordinate to this High Court can be transferred to other Courts which are subordinate to other High Courts and any ground is made out for transfer of the case to the other Courts.

7. The learned Counsel for the petitioner submits that it is open for this Court to transfer the cases to the other Courts subordinate to the other High Courts and it is not necessary that the Court to which the cases are transferred need be subordinate to this High Court. Under Section 23 Civil Procedure Code power is vested with the High Court to transfer the cases to other High Courts. In support of his contention, he relied on the judgment of the Supreme Court in *Western V.P. Electric Power Supply Company Ltd v. Hind Lamps Limited*, (1969) II SCWR 16. He also submits that in cases relating to transfer of matrimonial matters the Courts have to take into consideration the economic soundness of either of the parties, social strata of the spouses and the behavioural pattern of their standard of life antecedent to marriage and such other relevant material as held by the learned single Judge of Karnataka High Court in *Smt. Nanda Kishori v. S.B. Shivaprakash*, AIR 1993 Kar 87.

8. On the other hand, the learned Counsel appearing for the respondent Mr. C.B. Rammoham Reddy strenuously contends that no application would lie to this Court for transfer to the other Courts which are subordinate to the other High Courts. That power is available under Section 23(3) is taken away by Section 25 which came into effect from 1-2-1977 and the said power under Section 25 was held to be a wider power and therefore, after 1-2-1977 it is no more open for the High Court to transfer the cases to the other Courts under the jurisdiction of the other High Courts. He further submits that prior to substitution of Section 25, the Government was only having the power to transfer the cases from one High Court to another High Court, that too with certain limitations under the old Section 25. He heavily relies on the judgment of the Supreme Court reported in *Guda Vijayalakshmi v. Guda Ramachandra Sekhara Sastry*, AIR 1981 SC 1143. He

further submits that even though it is not directly related to Section 23(3) CPC and Section 25 CPC yet, the analogy is sufficient to constitute the principles settled by the Supreme Court.

9. For proper appreciation of the case, it is necessary to extract certain provisions of CPC Sections 22, 23 and 24 and 25 are relevant for the purpose of this case, which reads as under:

'Section 22. Power to transfer suits which may be instituted in more than one Court :-- Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, any defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any) shall determine in which of the several Courts having jurisdiction the suit shall proceed.

Section 23. To what Court application lies :--(1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under Section 22 shall be made to the Appellate Court.

2. Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the High Court.

3. Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

Section 24: General Power of transfer and withdrawal:--(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it; and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section-

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) 'proceeding' includes a proceeding for the execution of a decree or order.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court, which has no jurisdiction to try it.

Section 25. Power of Supreme Court to transfer suits, etc :--(1) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an Order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(2) Every application under this section shall be made by a motion, which shall be supported by an affidavit.

(3) The Court to which suit, appeal or other proceeding is transferred shall, subject to any special directions in the Order of transfer, either retry it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, Order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.'

10. Under Section 22, it is open for the defendant to apply for transfer of a case from one Court to another Court. The preconditions to move such an application is that the application should be made at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, that the application should be made after notice to the other party, that the suit could be filed in two or more Courts with concurrent jurisdiction and was instituted in one of such Courts. The process of filing of the application is contained in Section 23, where the several Courts having jurisdiction are subordinate to the same appellate Court, an application under Section 22 shall lie to the appellate Courts, or where the Courts are subordinate to different appellate Courts but under the same High Court, an application shall be made to the said High Court, but where such Courts are subordinate to different High Courts, within the local limits, an application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate. The general powers of the High Court and the District Court are provided in Section 24 where the High Court on the application of any of the parties or of its own motion, transfer any suit, appeal or other proceeding to any Court subordinate to it and competent to try or dispose of the

same. It is also empowered to withdraw any suit, appeal or other proceeding pending in any Court subordinate to it and try or dispose of the same or transfer the same to any other Court subordinate to it and competent to try or dispose of the same. Similar power is vested in the Supreme Court under Section 25 where it is empowered, if it is satisfied that the transfer is expedient for the ends of justice, to transfer the suit, appeal or other proceeding from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State. Learned counsel for the petitioner, however, submits that de hors the general powers vested in the Supreme Court under Section 25, power is also vested with the concerned High Court where the matter is pending.

11. Under Section 23 where the Courts are subordinate to different High Courts, an application has to be made to the High Court within the jurisdiction of the Court in which the suit is brought is situate. In the instant case, both the suits filed by the respondent husband are pending on the file of Family Court at Hyderabad which is subordinate to the High Court of Andhra Pradesh and the petitioner wife seeks both the suits to be transferred to a subordinate Court i.e., Family Court, Indore which is subordinate to the High Court of Madhya Pradesh. In the case before the Supreme Court in *Western U.P. Electric's case* (supra) the Western U.P. Electric & Power Supply Company Limited filed a suit against the Hind Lamps Ltd. in the civil Court at Mainpuri claiming amounts towards charges for the electricity consumed during February and March, 1962 and the minimum guarantee charges from 1st April to 30th September 1962. A suit in OS No.113 of 1965 was filed in the Court of the Senior Sub-Judge, Delhi by the Hind Lamps Limited, against the Electric Company claiming compensation for the loss arising, from defective supply. The Hind Lamps Limited filed an application in the High Court of Allahabad for transfer of the suit pending on the file of Civil Judge, at Mainpuri to the Court of the Sub-Judge, at Delhi. The Allahabad High Court passed Orders dated 24-3-1967 directing transfer of the suit to the Court of Sub-Judge 1st Class, Delhi. Thereafter, the Electric Company filed an application for recalling the Order on the ground that the condition precedent to the application of Sections 22 and 23 of CPC did not exist and the High Court had no jurisdiction to transfer the suit pending in the Mainpuri Court to a Court not subordinate thereto. However, after hearing the Counsel for the Electric Company, the application to recall the Order

was rejected against which the matter was carried to the Supreme Court in Civil Appeal. Reports having been called for from the lower Court, the Supreme Court found that the Hind Lamps Limited, had a branch office at Delhi and therefore, the suit could have also been filed by the Electric Company in the Court of Sub-Judge 1st Class at Delhi which has got jurisdiction. The Supreme Court further found that both the Courts at Mainpuri and Delhi have jurisdiction to entertain the suit filed by Electric Company. In para (8) of the judgment, the Supreme Court observed as follows:

'It was also contended that the procedure followed by the High Court was erroneous. It was submitted that the High Court should merely have declared that the suit should proceed in the Court of the Sub-Judge, Delhi, and the High Court could not transfer the suit from the Court of Civil Judge at Mainpuri. But the application contemplated to be made under Section 22 is one for transfer and when such an application is made, the Court is competent to determine in which of the several Courts having jurisdiction the suit shall proceed and to transfer the suit to that Court if it is already not pending in that Court. If the application made before the Court is one for transfer and the Court after considering the circumstances determines that one of the several Courts shall proceed to hear the suit, the determination, of necessity, must be followed by transfer of the suit to the Court in which it is to proceed; to hold otherwise would be to make the entire proceeding before the High Court meaningless.'

The Supreme Court, to a contention raised that the plaint could have been returned for presentation to the proper Court, observed as follows:

'A plaint may be returned for presentation to the proper Court if the Court in which it is pending has no jurisdiction to try it. A suit properly instituted in a Court which has jurisdiction may alone be transferred to another Court; it cannot be transferred to another Court if the Court in which it is pending is incompetent to entertain it.'

12. Referring to the facts of the case, the Supreme Court further observed as follows:

'In the present case, the suit was properly entertained by the Court of the Civil Judge at Mainpuri and by an application made under Sections 22 read with Section 23(3) of CPC it was ordered to be transferred. It was submitted that a High Court by transferring a suit pending in a Court subordinate to it, to another Court not subordinate to it intrudes its authority to compel that Court to try the proceedings, which it cannot control; exercise of jurisdiction of that character it was said could not have been contemplated by the Legislature. But that is what Sections 22 and 23(3) CPC expressly provide. We see no ground for holding that the sections were not intended to confer jurisdiction of the character exercised by the High Court by the Order appealed against.'

13. In *State Bank of India v. M/s. Sakow Industries Faridabad (Pvt) Ltd., New Delhi*, the learned single Judge of Punjab and Haryana High Court held that the High Court could examine the powers of transfer under Section 23(3) to meet the ends of justice and to prevent abuse of the process of the Court. It was a case where State Bank of India had filed a suit in Alipore Court in West Bengal against the defendants for recovery of loans amounting to 53 lakhs. The defendant company also filed a suit in the Ballabgarh Court in Punjab and Haryana for a permanent injunction restraining the petitioner Bank from interfering with the peaceful possession of its premises and its estates. Before the final settlement of issues in the Ballabhagarh suit the petitioner Bank filed an application before the High Court of Punjab and Haryana under Sections 22, 23(3) read with Section 151 of Civil Procedure Code for transfer of the latter suit to the Alipore Court. The High Court held that the same questions of law and fact were involved in the suits and moreover, the parties were also the same, the Court could order transfer of the case in exercise of its powers under Section 23(3) read with Section 151. In the peculiar circumstances of the present case and observing that it would meet the ends of justice and prevent the abuse of the process of the Court if the case pending in the Ballabhagarh Court is transferred to the Court at Calcutta in which the connected matter is pending between the petitioner Bank and the said Company, the Court ordered the transfer.

14. From the decisions referred to above, it is clear that the High Court is empowered to exercise the jurisdiction to transfer the case from the Court which

is subordinate to it to another Court which is subordinate to another High Court. But the question further arises is as to the effect of substituted Section 25 CPC. As per the old section, the Government was only having the power to transfer and that power to be exercised in a narrow compass. Earlier Section 25 was as follows:

'25.(1) Where any part to a suit, appeal or other proceeding pending in a High Court presided over by a single Judge objects to its being heard by him and the Judge is satisfied that there are reasonable grounds for the objection, he shall make a report to the State Government, which may, by notification in the Official Gazette, transfer such suit, appeal or proceeding in any other High Court:

Provided that no suit, appeal or proceeding shall be transferred to a High Court without the consent of the State Government of the State that High Court has its principal seat.

(2) The law applicable to any suit, appeal or proceeding so transferred shall be the law which the Court in which the suit, appeal or proceeding was originally instituted ought to have applied to such case.'

15. Subsequently, it was substituted by a new section which is already extracted in the preceding paragraph. The learned Counsel for the respondent submits that the old Section 25 CPC was substituted by new section with effect from 1-2-1977, Earlier to new section, the Supreme Court was not having any power to transfer the cases and it was only the State Government which was empowered the suits etc., in certain circumstances from one High Court to another High Court. Therefore, the Supreme Court had no occasion to consider the effect of new section vis-a-vis Section 23(3) CPC. He further submits that after introduction of new section with effect from 1-2-1977 vesting the general power with the apex. Court to transfer the cases, no application would be to the High Court for transfer of the suit etc., to the other Court subordinate to the other High Court or other Courts subordinate to the other High Courts under Section 23(3). Thus he submits that under Section 25 CPC wider power is vested with the Supreme Court which impliedly takes away the power of the High Court to transfer the cases under Section 23(3) CPC. He also alternatively submits that both Sections 23(3) and 25

CPC have to be harmoniously construed and wider power conferred on the Supreme Court has to be allowed to operate the field. He relies on the decisions reported in International Airports Authority of India v. Grand Slam International, : 1995ECR209(SC) and Smt. Sk Khasim Bee v. State of Election Commissioner, Hyderabad, 1996 (2) ALD 106 (DB). There is no dispute that when the Supreme Court decided the matter in U.P. Electric Power Supply Company's case (supra), substituted Section 25 was not therein the statute books. The substituted Section entered force on 1-2-1977, According to the statement of objects and reasons on the new section, the old section was found to be a narrow in scope and it only provided for transfer of the suit, appeal or other proceeding, pending in a High Court presided over by a single Judge. Further, the State Government was not found to be an appropriate agency for exercising the power of the transfer. Therefore, Section 25 was substituted by a new section provided wider power for transfer as it has in criminal case under Section 406 Cr.PC.

16. But the question is whether the power of the High Court under Section 23(3) to transfer the cases stands withdrawn by virtue of Section 25. The issue did not come up for consideration before the Supreme Court so far, nor the Counsel for the parties have been able to trace out the decision of the High Court, In Guda Vijayalakshmi's case (supra), it was a case where wife filed a suit for maintenance from the husband in the Court of Subordinate, Eluru, On receipt of the notice in the suit, the respondent-husband filed a petition for divorce under Section 13 of Hindu Marriage Act before the District Court, Udaipur, Rajasthan. Therefore, wife filed a petition for transfer before the Supreme Court under Section 25 CPC seeking to get the husband's suit transferred to Eluru. However, on preliminary objection was taken by the respondent-husband stating that Section 25 CPC under which the transfer petition was made, was not applicable to the proceedings under Hindu Marriage Act. As such, the Supreme Court has no jurisdiction to transfer the suit from Udaipur District Court to Eluru. It was also contended that Section 25 CPC was excluded by the reason of provisions Sections 21 and 21A of Hindu Marriage Act, as Section 25 deals with substantive law. The Supreme Court rejecting the said contention held thus:

'In the first place it is difficult to accept the contention that the substantive provision contained in Section 25 CPC is excluded by reason of Section 21 of [Hindu Marriage Act, 1955](#). Section 21 of the Hindu Marriage Act merely provides: 'Subject to the other provisions contained in this Act and to such rules - as the High Court may make in that behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908'. In terms Section 21 does not make any distinction between procedural and substantive provisions of CPC and all that it provides is that the Code as far as may be shall apply to Code as far as may be shall apply to all proceedings under the Act and the phrase 'as far as may be' means and is intended to exclude only such provisions of the Code as are or may be inconsistent with any of the provisions of the Act. It is impossible to say that such provisions of the Code as partake of the character of substantive law are excluded by implication as no such implication can be read into Section 21 and a particular provision of the Code irrespective of whether it is procedural or substantive will not apply only if it is inconsistent with any provisions of the Act. For instance it is difficult to countenance the suggestion that the doctrine of res judicata contained in Section 11 of the Code which partakes of the character of substantive law is not applicable to proceedings under the Act. Res judicata, after all, is a branch or specie of the Rule of Estoppel called Estoppel by Record and though Estoppel is often described as a rule of evidence, the whole concept is more correctly viewed as a substantive rule of law. (See: Canadian and Dominion Sugar Co., Ltd, v. Canadian National (West Indies) Steamships Ltd, (1947) AC 46, at P. 56 (PC).)'

Referring to Section 21A, the Supreme Court observed that marginal note of the section itself made clear that it deals with the power to transfer petition or consolidated trial 'in certain cases' and is not exhaustive. Further it observed that this provision in terms deals with the power of the Government or Court the power of transfer has been confirmed by the CPC as if it thus stands i.e., old Sections 24 and 25. It did not deal with the present Section 25, which has been substituted with effect from 1-2-1977. The Supreme Court observed as follows:

'By the amendment very wide any plenary power has been conferred on this Court for the first time to transfer any suit, appeal or other proceedings from one High

Court to another High Court or from one Civil Court in one State to another Civil Court in any other State throughout the country. Conferral of such wide and plenary power on this Court could not have been in the contemplation of Parliament at the time of enactment of Section 21A of the [Hindu Marriage Act, 1955](#). It is, therefore, difficult to accept the contention that Section 21A of Hindu Marriage Act excludes the power of transfer conferred upon this Court by the present Section 25 of CPC in relation to proceedings under that Act.'

Referring to the decision of the Bombay High Court (Nagpur Bench) in *Priyavari Mehta v. Priyavari Mehta*, : AIR1980 Bom337 , where the Bench observed thus:

'The effect of Section 21A, therefore, in my opinion, is that joint or consolidated hearing or trials of petitions other than those mentioned in that section not being permissible, the powers under Sections 23 - 25 of the Code cannot be exercised for transfer of petitions for a consolidated hearing of the petitions not contemplated by that section.'

The Supreme Court held thus :

'Such a view, in our opinion, is not correct. As stated earlier, in the matter of transfer of petitions for a consolidated hearing thereof Section 21A cannot be regarded as exhaustive for the marginal note clearly suggests that the section deals with power to transfer petitions and direct their joint and consolidated trial 'in certain cases'. More over, it will invariably be expedient to have a joint or consolidated hearing or trial by one and the same Court of a husband's petition for restitution of conjugal rights on the ground that the wife has withdrawn from his society without reasonable excuse under Section 9 of the Act and the wife's petition for judicial separation against her husband on ground of cruelty under Section 10 of the Act in order to avoid conflicting decisions being rendered by two different Courts. In such a situation resort will have to be had to the powers under Sections 23 - 25 of the Civil Procedure Code for directing transfer of the petitions for a consolidated hearing. Reading Section 21A in the manner done by the Nagpur Bench which leads to anomalous results has to be avoided.'

Justice Amarendra Nath Sen concurring with the judgment of Justice Tulzapurkar observed as follows:

'I have earlier set out Section 25 of the Code of Civil Procedure and I have pointed out that an analysis of the section makes it abundantly clear that for the ends of justice, wide power and jurisdiction have been conferred on this Court in the matters of transfer of any suit, appeal or proceeding from any High Court or other Civil Court in one State to a High Court or other Civil Court in any other State. A suit or a proceeding for divorce under the Hindu Marriage Act in a Civil Court is necessarily a suit or proceeding and must on a plain reading of Section 25(1) of the Code of Civil Procedure be held to come under Section 25(1) of the Code, as the said section speaks of any suit, appeal or other proceeding. This Court must necessarily enjoy the power and jurisdiction under the said provisions of transferring such a suit or proceeding for the ends of justice, unless the power and jurisdiction of this Court are specifically taken away by any statute. If the jurisdiction clearly conferred on any Court has to be ousted, the exclusion of such jurisdiction must be made in clear and unequivocal terms. Section 21 of Hindu Marriage Act does not deal with the question of jurisdiction of any Court. As no procedure with regard to the proceedings under the Hindu Marriage Act has been laid down in the said Act, Section 21 of the Act only provides that 'all proceedings under this Act shall be regulated as far as may be by the Code of Civil Procedure.'

Section 21 of Hindu Marriage Act cannot be construed to exclude the jurisdiction conferred on this Court under Section 25 of Code of Civil Procedure. It does not become necessary in the instant case to decide whether the provision in relation to jurisdiction of the Court contained in Section 25 of Code of Civil Procedure is one of substantive law or it belongs to the domain of procedure. Even if I accept the argument of the learned Counsel for the respondent that Section 25 does not form any part of the procedural law and is a part of the substantive law, I am of the opinion that jurisdiction conferred on this Court by Section 25 of the Code of Civil Procedure, is not in any way, affected by Section 21 of Hindu Marriage Act which, as I have already noted, only provides that 'all proceedings under the Hindu Marriage Act shall be regulated as far as may be by the Code of Civil Procedure, 1908'.

The learned Judge held thus:

'I am, therefore, of the opinion that this Court enjoys the power and jurisdiction to entertain this application under Section 25 of the Code of Civil Procedure and Sections 21 and 21A of the Hindu Marriage Act do not, in any way, exclude, affect or curtail the power conferred on this Court under Section 25 of the Code of Civil Procedure. I may incidentally add that the present Section 25 in the Code of Civil Procedure came into force after Sections 21 and 21A have been incorporated in the [Hindu Marriage Act, 1955](#).'

17. From the aforesaid judgments, it is clear that under Section 25 wider powers were conferred on the Supreme Court, but at the same time, the Supreme Court did not state that the power of transfer conferred under sub-section (3) of Section 21A of Hindu Marriage Act cannot be exercised either by the Government or the Court as the case may be. The Supreme Court did not lay down that Section 21A of Hindu Marriage Act became ineffective consequent on the new Section 25 with effect from 1-2-1977, though it only held that it enjoyed wider powers of transfer, and it can be exercised for the ends of justice.

18. Therefore, the contention of the learned Counsel for the respondent that the power of High Court under Section 23(3) is deemed to have been impliedly withdrawn consequent on the introduction of new Section 25 of Code of Civil Procedure cannot be accepted. Admittedly, as on date Section 23(3) continue to subsist on the statute books along with Section 25. What is held by the Supreme Court in Guda Vijayalakshmi's case (supra), that it had a wider power of transfer, but at the same time it cannot be construed that Section 23(3) became redundant. So long as the provision subsists, it continues to yield power vested in it. Merely because Section 25 confers the powers on the Supreme Court to transfer the case, it cannot be construed that Section 23 gets deleted. The Legislature would have thought fit to do so, when new Section 25 was enforced. Therefore, Section 23(3) and Section 25 have to be construed in a harmonious way and by doing so, it can only be interpreted that it is for the party seeking transfer either to choose the Forum under Section 23(3) or 25 depending upon his social, economic status. Option thus vested with the party. But, to say that the party is precluded from filing

application under Section 23(3) after 1-2-1977, and that the party has to file an application only before the Supreme Court under Section 25, would amount to emasculating Section 23(3). Both the provisions are independent and option is left to the party approaching the Court for transfer. Therefore, necessarily, I have to hold that Section 25 did not overlap Section 23(3) CPC.

19. The further question that arises for consideration is whether it is a fit case to transfer the suits from Hyderabad to Indore. In *Western U.P. Electric and Power Supply Company's case* (supra), the High Court of Allahabad considered the transfer of the case mainly on two grounds, that the Civil Court at Delhi was also having jurisdiction to entertain the suit and the Counsel for the Electric Company by conceding that the High Court of Allahabad has power of transfer to transfer the case to the Delhi. Referring to these events, the Supreme Court observed as follows:

'When Counsel for the appellant conceded that the High Court had jurisdiction to transfer the suit to Delhi Court, no reservation could be implied that in the circumstances of the case no grounds were still made out for transferring the suit. The concession related alike to the existence of conditions precedent as to the jurisdiction of the Court to transfer.'

20. In the instant case, such a situation is not present. The Counsel for the other side did not agree that the Indore Court has got jurisdiction to adjudicate the matter. Moreover, it is not clear whether the Indore Court had jurisdiction to entertain such a dispute. It is nowhere mentioned in the petition that the Family Court has got jurisdiction to try the matters which are pending in the Courts at Hyderabad and that the said suits could have been filed in Indore Court. Further, it is to be noted that the other cases stated to have been filed by the petitioner are not pending on the file of the Family Court at Indore and they are pending in the Court of Judicial Magistrate of First Class, Indore for the alleged offences under Sections 498A and 406 Indian Penal Code and for maintenance under Section 125 of Criminal Procedure Code. Therefore, even assuming that application for transfer is maintainable under Section 23(3) of CPC yet the conditions precedent for filing such an application are required to be fulfilled.

21. Inasmuch as the petitioner did not allege or establish that the Family Court at Indore was also having jurisdiction to try the cases whose transfer is sought for, this application has to be necessarily rejected.

22. It is true that the learned single Judge of Karnataka High Court observed that in case of matrimonial matters Courts have to take into consideration various aspects such as economic soundness of the parties, social starlet of the parties and behavioural pattern of the standard of life prior to and subsequent to marriage and further circumstances of either of the parties in eking out their livelihood. But that was a case arising under Section 24 CPC where the husband filed petition for divorce at Bangalore and wife sought for transfer of the case from Family Court, Bangalore to Hubli, where the wife was living with her parents. But, the most important question is the jurisdiction. When once the petitioner did not state that Indore Court has jurisdiction to entertain the application, these considerations would not come into play. Under these circumstances, I do not find any merit in the petition and it is accordingly dismissed.

23. The lower Court is directed to dispose of the matter expeditiously within a period of six months from the date of receipt of a copy of this Order. It is made clear that if any threat posed to the petitioner, whether directly or indirectly, from the respondent, it is always open for the petitioner to seek assistance of the police. She may also file an application to the Court seeking appropriate direction should such an occasion arise. It is brought to the notice of the Court that the petitioner is an educated lady and she had completed her LLB and this Court sees no difficulty in getting over the situation if at all she encounters.

24. The Tr.CMPs., are accordingly dismissed. No costs.