

Koppera Santha Kumar Vs. Koppera Suneetha W/O K. Santha Kumar and ors.

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Court : Andhra Pradesh

Decided On : Dec-28-2005

Reported in : 2006CriLJ1094; II(2006)DMC655

Judge : G. Chandraiah, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 125, 177 to 179, 182(2) and 407; Indian Penal Code (IPC) - Sections 494, 495, 497A and 498A; [Hindu Marriage Act, 1955](#) - Sections 19

Appeal No. : Tr. Crl. P. No. 174 of 2005 and Tr. C.M.P. Nos. 406 of 2004 and 426 of 2005

Appellant : Koppera Santha Kumar

Respondent : Koppera Suneetha W/O K. Santha Kumar and ors.

Advocate for Def. : N.V. Anantha Krishna, Adv.

Advocate for Pet/Ap. : N. (P) Anjana Devi and ;Satyanarayana, Adv.

Judgement :

ORDER

G. Chandraiah, J.

1. Heard both the counsel.
2. As the parties are husband and wife and the subject-matter is connected in all the three petitions, they are being disposed of by this common order.
3. The petitioner in Tr. Crl. P. No. 174/ 2005 and Tr. C.M.P. No. 406/2005 is the husband and the respondent in these two petitions is the wife. The petitioner in Tr. C.M.P. No. 426/2005 is the wife and the respondent, is the husband.
4. For the sake of convenience, the parties will be referred to as husband and wife.
5. Tr. Crl. P. No. 174/2005 is filed by the husband under Section 407 of Cr.P.C. seeking transfer of Crl. M.P. No. 1341/2005 in M.C. No. 29/1997 filed by the wife for enhancement of maintenance amount, on the file of III Additional Munsif Magistrate Court, Kakinada to the Family Court, Kurnool.
6. The husband also filed Tr. C.M.P. No. 406/2005 seeking transfer of O.S. No. 828/2004 filed by the wife for maintenance on the file of II Junior Civil Judge, Kakinada to the Court of Junior Civil Judge at Kurnool.
7. The wife of Tr. C.M.P. No. 426/2005 seeking transfer of O.P. No. 11/2005 filed by the husband for divorce on the file of Principal District Judge, Kurnool to the competent Court at Kakinada.
8. The case of the husband as stated in the affidavits filed in support of the Tr. Crl. P. No. 174/2005 and Tr. C.M.P. No. 406/2005 is that he is working as Assistant Executive Engineer, R and B Department, Emmignaooru, Kurnool District. His marriage with Koppera Suneetha, was performed on 25-2-1995. His wife did not give any conjugal society during the wedlock and filed M.C. No. 29/1997 on the file of III Additional Judicial I Class Magistrate, Kakinada and the same was allowed and that he has been complying with the orders of maintenance. He is suffering from heart problem and getting treatment for the same and that he is not in a position to travel long distances and that the doctor also advised to avoid long journeys. The respondent filed O.S. No. 828/ 2004 for maintenance on the file of II Junior Civil Judge, Kakinada. The wife also filed Crl. M.P. No. 1341/2005 in M.C. No. 29/ 1997 for enhancement of maintenance. The husband also gave

undertaking that he would meet the expenses of the wife to attend the Court at Kurnool, if the case is transferred. Therefore, as the husband is finding it difficult due to heart problem to attend the Courts at Kakinada, he is seeking transfer of the cases i.e., the Crl. M.P. No. 1341/2005 in M.C. No. 29/1997 and O.S. No. 828/2004 to the Courts at Kurnool.

9. The wife filed Tr. C.M.P. No. 426/2005 seeking transfer of O.P. No. 11/2005 filed by the husband for divorce on the file of Principal District Judge, Kurnool to any competent Court at Kakinada. Her case in the affidavit filed in support of the transfer petition is that her marriage with Koper Santha Kumar was performed on 25-2-1995 at St. Luthern Church, Eluru according to the Christian rites and customs. Her husband deserted her without any reason by leaving at her parents place as long back as 1995. Her husband is also not paying the meager maintenance granted to her and, therefore, she was compelled to file the suit in O.S. No. 828/2004 on the file of II Junior Civil Judge, Kakinada and the I.A. regarding the interim maintenance is pending enquiry and in the meanwhile, her husband filed O.P. No. 11/2005 on the file of Principal District Judge, Kurnool with all false allegations. She stated that she is housewife and has no means of income. Her parents are aged and they are not in a position to take care of her and that he is finding it difficult to look after her minimum necessities. It is stated that she apprehends danger to her life in the hands of her husband, if she goes to Kurnool in the name of contesting the proceedings and that she cannot afford to take all her witnesses all the way to Kurnool, which is a costly affair and that the witnesses also may not come to Kurnool, keeping in view the distance. It is stated that her husband deserted her since 1995 and forced her to stay at Kakinada at the mercy of her parents and that she is not receiving from her husband even the meager maintenance granted in M.C. No. 29/1997 and, therefore, she filed O.S. No. 828/2004. Therefore, in the light of these circumstances, the wife sought the transfer of the case from Kurnool to Kakinada.

10. In the counter filed to Tr. C.M.P. No. 406/2004, the wife reiterated the above contentions.

11. The husband filed counter to Tr. C.M.P. No. 426/2005 and denied all the averments made by the wife including the ground of desertion and reiterated the averments made in Tr. CrI. P. No. 174/2005 and Tr. C.M.P. No. 406/2005. He stated that due to heart problem he cannot travel long distance and that the doctors advised to avoid long distances. Along with the counter, he also filed xerox copies of the details with regard to his medical treatment.

12. From the above, it is to be seen that the marriage of the parties was performed on 25-2-1995 at St. Lutharian Church, Eluru and with a short period differences arose. The case of the husband is that the wife did not give any conjugal society and that the case of the wife is that the husband deserted her without any reason and left her at the mercy of her parents. However, the validity of the said grounds cannot be gone into in this transfer petitions. But the admitted fact is that the wife is residing with her parents at Kakinada. Further as the wife was unable to maintain herself, she filed M.C. No. 29/1997 on the file of III Additional Judicial First Class Magistrate, Kakinada. The filing of the maintenance case is within a short period of marriage i.e., the marriage was performed in the year 1995 and the maintenance case was filed in the year 1997 and the said case was allowed by granting compensation. The case of the wife is that she is not receiving the meager compensation and the husband denied the same. Thereafter, the wife filed O.S. No. 828/2004 on the file of II Junior Civil Judge, Kakinada for maintenance. It is well settled that the proceedings under Section 125 of Cr. P.C. are meant for proving immediately succor to the claimant and that will not be a bar filing a separate suit for maintenance, but however in the suit, the maintenance granted in the criminal proceedings, will be considered while determining the amount of maintenance in maintenance O.P.

13. The only ground on which the husband is seeking the transfer of the cases is that he is suffering from heart problem and in support of his case, he filed some xerox copies of the details of the treatment and prescriptions. From a perusal of the said xerox copies, it could be seen that most of them are of the year 1995 and very few are of the years 1996 and 1997 and that the case of the respondent is that the doctor advised to avoid long journeys. Further there is no information regarding the recent development and the present cases are filed in year 2005.

Learned counsel for the wife contended that those prescriptions are not regular. Therefore, I am of the view that they cannot be taken as a basis to order transfer.

14. Further it is to be seen that the marriage of the parties was performed at Eluru and the III Additional Judicial First Class Magistrate, Kakinada also granted maintenance in M.C. No. 29/1997. Therefore, it is clear that the wife is not unable to maintain herself and, therefore, she was granted maintenance and as per the case of the wife, as the maintenance granted in M.C. No. 29/ 1997 is not sufficient, she filed O.S. No. 828/ 2004. Subsequent to the filing of these cases, the husband filed the petition for divorce in the year 2005 at Kurnool. The wife also pleaded that all the witnesses are from Kakinada and they will not be able to attend the Court at Kurnool. The counsel appearing for the husband submitted that the husband is prepared to bear the expenses of not only the wife but also of the witnesses to attend the Court at Kurnool. This cannot be taken, to allow the transfer. Apart from monitory loss, there will be number of factors, which cannot be compensated in terms of money.

15. The wife in the affidavit filed in support of her transfer petition stated that she apprehends danger to her life at the hands of her husband if she goes to Kurnool. The husband has no doubt denied the same.

16. The learned counsel for the wife contended that the husband is working at Emignoor and residing at Kurnool and when he is able to travel to Emegnoor, there could not be any problem to travel to Kakinada to contest the case. On the other hand, the learned counsel for the husband submitted that the distance between the Kurnool and Emignoor is very less and, therefore, he is able to travel.

17. With regard to criminal proceedings in CrI. M.P. No. 1341/2005 in M.C. No. 29/ 1997 is concerned, it is to be seen that they are proceedings under Section 125 of Cr. P.C. A learned single Judge of this Court in Syed Khaja Mohiuddin v. State of A.P. 2005 (2) LS (AP) 284 (Tr. CrI. M.P. No. 3271/2004 dated 4-4-2005) considering the scope of Sections 177 - 179 of Cr. P.C. with regard to criminal trial and the considering Section 125 of Cr. P.C. and also Sections 494, 495 and 498A, I.P.C. held at paragraph No. 12 as under:

The choice of initiating proceedings under Section 125 of Cr. P.C., is given to the woman. She can file a maintenance case at a place where her husband is staying, where she resides or where the husband and wife last resided as the case may be. To the similar effect is Section 182(2), Cr. P.C. The said provision lays down that any offence punishable under Section 494, Bigamy or Section 494 of I.P.C. may be enquired into or tried by a Court within whose local jurisdiction the offence was committed or that the offender last resided with his or her spouse by first marriage. All these provisions indicate that woman who is subjected to cruelty can file a complaint or lodge an F.I.R. at a place where the husband resides or the relative resides, at a place where she resides or at a place where both of them last resides. Needless to mention that as an offence is in relation to marriage, such a complaint can be enquired into and tried by a Court at a place where marriage was performed as well. The choice of choosing the Court is certainly with the married woman and that husband or relatives, who are accused of committing an offence under Section 497A of I.P.C. cannot choose the forum of their choice. Be it noted that under Section 19 of [Hindu Marriage Act, 1955](#), a petition for restitution of conjugal rights, judicial separation or divorce can be filed at a place where the marriage was solemnized or at a place where the opposite party resides or at a place where both the parties last resided.

18. In view of the above it is clear the wife is given choice to file a petition under Section 125 of Cr. P.C. at her choice in any of the places i.e., where her husband is staying; where she resides or where the wife and husband last resided. In the present case, as the wife was residing at Kakinada she filed the maintenance case under Section 125 of Cr. P.C. at Kakinada and as per the judgment of the learned single Judge in offences relation to marriage, the choice is given to women. In the present case, to deviate from these guidelines, there is no sufficient or exceptional ground.

19. From the above it is clear the wife is residing at Kakinada and as per her case she is depending upon her parents and she is finding it difficult to travel from Kakinada to Kurnool and all the witnesses are also at Kakinada and further their marriage was solemnized at Eluru. The wife also apprehends danger to her life. The Apex Court as well as this Court in catena of judgments held that in

matrimonial matters, the convenience of wife has is to be given prima consideration.

20. In view of the foregoing reasons, I pass the order as under:

Tr. Crl. P. No. 174/2005 and Tr. C.M.P. No. 406/2005 are hereby dismissed and Tr. C.M.P. No. 426/2005 is hereby allowed and the suit in O.P. No. 11/2005 on the file of Principal District Kurnool is hereby withdraw and transferred to the Court of Principal Senior Civil Judge, Kakinada, East Godavari District.

21. In the circumstances of the case, there shall be ho order as to costs.

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