

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER**TRANSFER CRIMINAL PETITION No.9 OF 2023****ORDER:**

This Transfer Criminal Petition is filed by the petitioner/husband under Section 407 Cr.P.C, seeking transfer of F.C.O.P No.337 of 2022 on the file of V Additional District Judge-cum-Family Court Judge at Tirupathi to the Court of VI Additional District and Sessions Judge-cum-Family Court, Nellore, SPSR Nellore District.

2. After considering the prayer of the petitioner in the present petition, this Court has taken up hearing of the petition at the time of admission itself.

3. It is the contention of the petitioner/husband that Respondent No.2/wife filed petition against him under Section 125 of Cr.P.C, claiming maintenance which is F.C.O.P.No.337 of 2022 on the file of V Additional District Judge-Cum-Family Court Judge, at Tirupathi, Tirupathi District. He alleged that on 06.01.2023 when he attended the Court at Tirupathi some unknown people followed him and his family members and threatened them to settle the dispute with his wife by paying huge amount to his wife for which he gave a report to the Superintendent of Police at Tirupathi town.

4. The petitioner submits that due to above referred incident he is feeling insecurity to his life while attending Court hearings at Tirupathi and he is not in a position to attend the Court regularly at Tirupathi in F.C.O.P No.337 of 2022. He submits that previously he also filed W.P.No.1199 of 2023 wherein this Court directed Disha police station, Tirupathi not to summon him to the police station except in pursuance of investigation in the registered crime. The petitioner prays to transfer F.C.O.P No.337 of 2022 on the file of V Additional District Judge Cum Judge Family Court, at Tirupathi, Tirupathi District to VI Additional District and Sessions Judge-cum-Family Court, Nellore, SPSR Nellore District.

5. I have heard learned counsel for the petitioner.

6. Learned counsel for the petitioner Mr.P.Venkata Mohan Rao would submit that petitioner attended Family court at Tirupathi on 06.01.2023 when he was returning to bus stand; some unknown people followed him and his family members and threatened the petitioner to settle the dispute with Respondent No.2 by paying huge amount. He would further submit that the petitioner is working as a Software Engineer at Bangalore, now is working from home staying at Nellore

apprehending threat to his life if he attends Court at Tirupathi.

He prays to allow the petition.

7. In view of submissions made by the learned counsel for petitioner, issue that emerges for consideration by this Court is:-

Whether the petition is maintainable either in law or on facts?

8. **Point:** -Before going into the merits of the case, it would be beneficial to quote Section 407 Cr.P.C which reads as under:-

“407. Power of High Court to transfer cases and appeals –

(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise; or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order –

- (i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;
- (ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a Criminal Court of equal or superior jurisdiction;
- (iii) to any particular case be committed for trial to a Court of Session; or

- (iv) that any particular case or appeal be transferred to and tried before itself.

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:

Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under sub-section (1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under sub-section (7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may if it is satisfied that it is necessary so to do in the interests of justice, order that pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose:

Provide that such stay shall not affect the subordinate Court's power of remand under section 309.

(7) Where an application for an order under sub-section (1) is dismissed, the High 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 one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under sub-section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under section 197.

9. Admittedly Respondent No.2/wife filed petition in F.C.O.P.No.337 of 2022 on the file of V Additional District Judge-Cum-Judge Family Court, at Tirupathi, Tirupathi District under Section 125 Cr.P.C, seeking maintenance from the petitioner herein.

10. It is not in dispute that petitioner is working as Software Engineer, whereas Respondent No.2/wife is a house-maker having no income, due to that she approached Judge, Family Court, by filing petition under Section 125 Cr.P.C read with Section 7 of Family Court Act, claiming maintenance of Rs.50,000/- per month.

11. The petitioner has filed copy of representation made to the Superintendent of Police, Tirupathi dated 6.1.2023 wherein he alleged that when he went to attend Family Court, Tirupathi some unknown persons followed him and his family members and threatened them at Tirupathi bus stand not to attend the Court to contest the case. It is no doubt true that copy of representation dated 6.1.2023 shows that petitioner made a representation to the Superintendent of police, Tirupathi and he is also said to be taking steps to file a report before concerned police station. Previously the petitioner has filed W.P.No.1199

of 2023 along with his family members, when Disha police station at Tirupathi issued summons to them to attend before police station, which they challenged, wherein this Court passed an order that not to summon the petitioner and his family members to police station except in pursuance of investigation in the registered crime. When petition itself is filed by Respondent No.2/wife seeking maintenance on the ground that she has no means to maintain herself and asking Respondent No.2/wife to attend the Court at Nellore would be more onerous to her which may add additional burden to her. Further more apprehension of the petitioner that he is having threat to his life itself is not a ground to consider the request of the petitioner to transfer the case from Tirupathi Court to Nellore which is at a distance of 150 km from the place where Respondent No.2 is now residing. Therefore, this Court is of the considered opinion that petition filed by the petitioner is not maintainable either in law or on facts.

12. In the result, Transfer Criminal Petition is dismissed at admission stage itself with a direction to the Judge Family Court, Tirupathi not to insist physical presence of the petitioner before the Court if he engages an advocate, except at the time of enquiry or at the time of recording his evidence.

It is also directed to Deputy Superintendent of Police, Tirupathi West to provide necessary protection to the petitioner whenever he attends the Court and petitioner shall intimate his date of attending the Court to the Deputy Superintendent of Police, Tirupathi, in advance. No order as to costs.

Consequently, miscellaneous petitions, if any, pending shall stand closed. The interim stay if any granted stands vacated.

JUSTICE BANDARU SYAMSUNDER

Date :20.02.2023

GRL.

149

THE HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

Tr.Crl.P.No.9 of 2023

Date : 20.02.2023

GRL.