

(2009) 04 KAR CK 0061
In the Karnataka High Court
Case No : Criminal Petition No. 1491 of 2009

Sri V. Vijaya Bhaskar

APPELLANT

Vs

Smt. G. Nandini Bhaskar and Shwetha

RESPONDENT

Date of Decision : 30-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 407

Citation : (2009) 04 KAR CK 0061

Hon'ble Judges : Jawad Rahim, J

Bench : Single Bench

Advocate : G.R. Jayanna, for the Appellant;

Final Decision : Dismissed

Judgement

Jawad Rahim, J.—The petition is u/s 407 of the Cr.P.C. seeking withdrawal of case in Cr. Misc. No. 18 of 2009 from the file of JMFC, Bangarpet to be transferred and assigned to Family Court at Bangalore.

2. The contextual facts as manifests, disclose petitioner V. Vijaya Bhaskar is husband of G. Nandini through whom he has a daughter Shweta aged 1 1/2 years.

3. On the allegation of willful neglect and deprival of basic sustenance, Nandini has filed a petition seeking maintenance invoking Section 125 Cr.P.C., which petition is pending adjudication on the file of the learned JMFC, Bangarpet.

4. The petitioner in the meantime appears to have thought of seeking company of his wife and filed M.C. No. 997 of 2009 u/s 9 of the Hindu Marriage Act, 1955 for restoration of conjugal right. Such petition is filed at Family Court, Bangalore.

5. In this petition, the petitioner seeks withdrawal of the maintenance case filed by his wife from Bangarpet Court to the Family Court at Bangalore on two grounds viz., (1) the petitioner will suffer undue mental agony to go over to the court at Bangarpet (2) he is prepared to bear travel expenses of Nandini to go

over to Bangalore to attend the case. Thirdly, it will be desirable that the same Judge decide both the issues i.e., maintenance as also the claim for restoration of conjugal right

6. None of this must impress as justifying transfer at the behest of the petitioner. It appears that the main allegation against the petitioner is he has shown willful neglect and failed to maintain not only his wife, but the young daughter who is an infant of 1 1/2 years. At present Nandini is residing within the jurisdiction of JMFC, Bangarpet where he has filed the petition. Therefore, that court does not suffers from lack of territorial jurisdiction or on the subject matter for adjudication. As far as Bangalore Family Court is concerned, the petitioner has filed the matrimonial case claiming he is in the jurisdiction of the Bangalore Court. We are not on the question of which court has or has no jurisdiction. The question is whether in the feet situation, whether it is necessary or expedient to withdraw the case pending from the file of a court which enjoys jurisdiction for adjudication to a different court, especially in a case where the petition is for grant of maintenance. As there is no question of lack of jurisdiction raised, withdrawal of the case from one court to another cannot be done lightly, unless special circumstances are made out. The provision of 407 Cr.P.C. is very clear the Court must be satisfied that it a expedient and in the interest of justice to do so. I do not find any such ground. Hence the petition is dismissed as devoid of merit.