

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

C.R.P.No.1053 of 2023

ORDER:

The petitioner and the respondent were married, under the Special Marriage Act, 1954 (for short 'the Act'), on 23.12.2017. On account of differences between them, the respondent had filed Crime No.58 of 2018 under Section 498-A of I.P.C., and Section 3 & 4 of the Dowry Prohibition Act, a maintenance case bearing M.C.No.88 of 2018 and a Domestic Violence Case bearing D.V.C.No.40 of 2019 before the II Additional Judicial Magistrate of I Class, Bhimavaram. The petitioner herein had filed, before the Principal District Judge, Eluru, D.O.P.No.63 of 2020 for dissolution of marriage by grant of a decree of divorce under Section 27 of the Act.

2. The respondent approached the Principal District Judge, West Godavari, Eluru by way of T.O.P.No.49 of 2022 seeking transfer of D.O.P.No.63 of 2020 from the Court of Principal District Judge, Eluru to the Court of the III Additional District Judge, Bhimavaram, as she was residing in Bhimavaram and the other cases were all before the Court in Bhimavaram. This petition was allowed by the Principal District Judge, West Godavari District, Eluru, on 06.03.2023. The said order of Transfer is challenged before this Court in the present revision petition.

3. Heard Sri P. Venugopala Rao, learned Senior Counsel appearing for Sri Sambasiva Pratap Evana learned counsel for the

petitioner and Sri P.N. Murthy, learned counsel appearing for the respondent.

4. Sri P. Venugopala Rao, learned Senior Counsel contends as follows:

a) Section 27 of the Special Marriage Act, 1954 stipulates that a petition for divorce would have to be presented to the District Court.

b) Section 2(e) of the Act defines "district court" as –

"district court" means, in any area for which there is a city civil court, that court, and in any other area, the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government by notification in the Official Gazette as having jurisdiction in respect of the matters dealt with in this Act."

c) In view of the words "Principal Civil Court of original jurisdiction" in Section 2 (e), a divorce petition under the Act, can be maintained only before the Principal District Judge of the District and the said petition cannot be transferred to any other Court including the Court of an Additional District Judge. This contention is fortified by the language of Section 2(e), which states that a petition can be moved before any other civil Court, which may be specified by the State Government, by notification in the official Gazette as having jurisdiction in respect of the matters dealt with in the Act.

d) The aforesaid provision of Section 2(e) clearly restricts petitions to be filed either before the Principal District Judge or before a Court / Judge specified by the State Government by notification only.

e) There is no notification specifying Additional District Judges or the III Additional District Judge, Bhimavaram as having jurisdiction in respect of the matters under the Act.

f) Section 40-A of the Act, which empowers transfer of petitions, only permits transfer of divorce petition under Section 27 of the Act from one District Court to another District Court where the parties to the marriage had filed separate divorce petitions before different District Courts. The language of Section 40-A of the Act cannot be extended to include transfers within a district.

g) The provisions of the Andhra Pradesh Civil Courts Act, 1972 do not in any manner relax the rigour of the language in Section 2(e) of the Act. Sections 10 and 11 of the A.P. Civil Courts Act, 1972 provide for appointment of District Judges and Additional District Judges, which make it clear that the District Judge can only distribute cases to a notified Court and such power of transfer would not permit the Principal District Judge to transfer a divorce petition under the Special Marriage Act to a Judge of the rank of Additional District Judge. He relies upon the judgment of the

Hon'ble Supreme Court in **Kuldip Singh vs State of Punjab and Anr.**,¹
(paragraph No.36).

5. The combined High Court had issued a circular bearing No.17/2018, dated 19.09.2018 empowering the Principal District Judges to transfer cases filed under various Acts, including Divorce Act, Guardian and Wards Act, Hindu Minority and Guardianship Act, Mental Health Act and the Arbitration and Conciliation Act, etc., to the Additional District Courts of respective jurisdiction in the District.

6. Sri P. Venugopala Rao, learned Senior Counsel would submit that the said circular does not mention the Special Marriage Act, 1954 and therefore the same would not be applicable. He would also submit that a circular issued on the administrative side of the High Court would not bind this Court on the judicial side.

7. Sri P.N. Murthy, learned counsel appearing for the respondent would submit that the language of Section 2(e) read with Sections 10 and 11 of the A.P. Civil Courts Act makes it amply clear that a divorce petition under the Special Marriage Act would have to be filed before the Principal District Judge and there upon can be transferred to the Court of an Additional District Judge having territorial jurisdiction. He submits that on a plain reading of the aforesaid provisions, there can be no doubt that transfer of divorce O.P from the Court of the Principal

¹ AIR 1956 SC 391

District Judge, Eluru to the Court of the III Additional District Judge, Bhimavaram, does not require any interference.

8. Section 27 of the Act requires a divorce petition to be filed before the District Court. The definition of "district court" under Section 2(e) of the Act speaks of the Principal Civil Court of the original jurisdiction. It also includes any other civil Court which may be specified by the State Government for such purpose.

9. The contention of Sri P. Venugopala Rao is that, Section 2(e) defines "district court" to mean either (a) the principal Court of original jurisdiction; or (2) a Civil Court, which is specified by the State Government, by way of a notification, for such purpose. He contends that there is no provision for considering a third category of Court to have jurisdiction under Section 27 of the Act.

10. The definition of District Court under Section 2(e) apart from specifying the Principal Civil Court of original jurisdiction also includes any other civil Court which is specified by the State Government. In view of the usage of the word "includes", the said definition would have to be treated as an inclusive/extensive definition. An inclusive definition would mean that certain objects or entities, which may not fall within the ambit of the definition, are brought within the ambit of the definition and in some cases included by way of abundant caution. Such inclusive definitions are never treated as an exhaustive enumeration or objects or

entities mentioned in the definition alone. Such an inclusive definition would mean that there can be other categories or classes of objects or entities falling within the ambit of the definition, even if they have not been specifically enumerated in the definition.

11. In view of the fact that the definition under Section 2(e) is an inclusive definition, the contention of Sri P. Venugopala Rao, that the definition of district court is restricted to the two categories of courts mentioned in Section 2(e), cannot be accepted.

12. Section 40-A of the Act relied upon by Sri P. Venugopala Rao, to understand the scope of the definition of 'district court', would not be of any assistance, as Section 40-A is dealing with transfer of a petition from the jurisdiction of one District Court to the jurisdiction of another District Court. This provision does not deal with transfers within a District and there is no prohibition, under Section 40-A, in relation to such transfers.

13. The judgment of the Hon'ble Supreme Court in **Kuldip Singh vs State of Punjab and Anr.**, relied upon by Sri P. Venugopala Rao, was dealing with the provisions of the Punjab Civil Courts Act for the purpose of ascertaining whether an Additional District Court would be treated as a District Judge under the provisions of the said Act. The issue before the Hon'ble Supreme court was whether an appeal which would normally lie to the District Judge would also lie to the Additional District

Judge. The Hon'ble Supreme Court noticed the provisions of the Punjab Civil Courts Act, in paragraphs 33 to 36, and held that there was no provision for the post of Additional District Judge as the posts enumerated in the Punjab Civil Courts Act only mentions an Additional Judge. It may also be noted that the Hon'ble Supreme Court at the very beginning of the judgment specifically held that the findings given by the Hon'ble Supreme Court would be restricted to the State of Punjab as it is being delivered on the basis of the language of the provisions of the Punjab Civil Courts Act only. The said judgement would have no bearing on the present case.

14. It would also be open to the Court to look to the provisions of the A.P. Civil Courts Act, 1972 to determine what would constitute a District Court.

15. The A.P. Civil Courts Act, 1972 provides for establishment of District Courts and appointment of Additional District Judges, under Section 10 and 11 of the Act, in the following manner.

“10. Establishment of District Courts - (1) The Government may, after consultation with the High Court, by notification, establish such number of District Courts as they may deem necessary and appoint a District Judge for each District Court.

(2) The Government may, from time to time, likewise abolish any District Court established under this section.

11. Appointment of Additional District Judges - (1) Where, in the opinion of the High Court, the state of business pending in a District Court, so requires, the

Government may, after consultation with the High Court, appoint one or more Additional District Judges to the District Court for such period as they may deem necessary.

(2) An Additional District Judge so appointed shall perform all or any of the functions of the District Judge under this Act or any other law for the time being in force which the District Judge may assign to him, and in the performance of those functions, he shall exercise the same powers as the District Judge.”

16. Section 10 provides for appointment of a District Judge for each District Court, Section 11(1) provides for appointment of one or more Additional Judges to the District Court for such period as deemed necessary. Section 11(2) stipulates that an Additional District Judge appointed under Section 11 (1) shall perform all or any of the functions of District Judge, which are assigned to the Additional District Judge by the District Judge, and that the Additional District Judge would have the same power as that of the District Judge.

17. This provision makes it amply clear that both the District Judge and the Additional District Judge are part of the District Court. This gains significance as Section 27 requires an application to be filed before the District Court and not before the Principal District Judge. Even otherwise Section 11(2) empowers the District Judge to transfer any case to the Additional District Judge who would have the same power as that of the District Judge in disposing of the transfer cases. In the circumstances, it cannot be held that an Additional District Judge is barred from

considering or disposing of divorce petitions filed under the Special Marriage Act.

18. A similar issue had come up before a Division Bench of the High Court of Andhra Pradesh in the case of **Lakhamraju Sujagtha vs. Yuvaraj Finance Pvt. Ltd., and ors.**². This case arose under the provisions of Arbitration and Conciliation Act, 1996 where the Court was defined to be the Principal Civil Court of original jurisdiction in a District and the question of whether an Additional District Judge is barred from enforcing an arbitral tribunal on the ground that an Additional District Judge would not fall within the meaning of the term "Court", also arose for consideration. The Division Bench after considering all the issues arising therein and applying the provisions of Section 10 and 11 of the Civil Courts Act, had held that an Additional District Judge meets the requirements engrafted under the provisions of the Arbitration and Conciliation Act and would be competent to enforce the decree.

19. The language employed in both the Arbitration and Conciliation Act, 1996 and the Special Marriage Act, 1954 are in *pari materia* similar and the ratio of the judgment of the Division Bench would apply squarely to the provisions of the Special Marriage Act, 1954 also.

20. The appropriate interpretation of the provisions would be to hold that a petition under Section 27 of the Special Marriages Act, would

² 2010 (1) ALD 153

have to be filed before the Principal District Judge, who can either hear the matter himself or transfer the matter to any of the additional district judges.

21. For all the aforesaid reasons, this civil revision petition is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand closed.

16th August, 2023
Js.

R. RAGHUNANDAN RAO, J.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

C.R.P.No.1053 of 2023

16th August, 2023

Js.