

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-8050 of 2015
Date of decision: 14.12.2015**

Sonia and another

..Petitioners

Versus

Surmukh Singh deceased through his L.Rs.

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Ms. Swati Batra, Advocate
for the petitioners.

Mr. B.S. Bairagi, Advocate
for the respondents.

Daya Chaudhary, J.

The present petition has been filed under Section 407 read with Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') for transfer of case titled as “Surmukh Singh vs. Ram Lubhaya and others”, Criminal complaint No.79RT/2013, under Sections 452, 323, 325, 506, 500 read with Section 34 of Indian Penal Code (for short 'IPC') pending in the Court of Sub Divisional Judicial Magistrate, Rajpura to the Court of competent jurisdiction at Yamuna Nagar at Jagadhri where the other cases filed by petitioner No.1-Sonia i.e., FIR No.38 dated 04.02.2014 registered under Sections 498-A, 406, 323

IPC at Police Station Farakpur, District Yamuna Nagar, petition No.133 under Section 125 Cr.P.C. as well as a complaint under the Protection of Women from Domestic Violence Act, 2005 (for short 'the Act 2005') and the cases filed by petitioner No.2-Babli i.e., FIR No.104 dated 21.03.2014, registered under Sections 498-A, 406 IPC at Police Station Farakpur, District Yamuna Nagar, petition No.22 under Section 125 Cr.P.C. and complaint No.67 dated 13.05.2014 under the Act 2005, are pending.

Both the petitioners are sisters and they were married in one house to both the brothers. Petitioner No.1-Sonia was married to Balwinder Singh (respondent No.2) whereas petitioner No.2-Babli was married to Mohan Singh @ Parveen Singh (respondent No.3) in the year 2010. Both the petitioners were given beatings and injuries were also caused to them. A complaint was filed under Sections 452, 323, 325, 506, 500 read with Section 34 IPC by the complainant on 01.11.2011 against Ram Lubhaya, Krishna, Sonia, Babli and Baldev Raj. Both the petitioners were summoned to face trial under Sections 323, 325 and 506 IPC by the trial Court vide order dated 04.06.2014. The aforesaid complaint is still pending before Judicial Magistrate Ist Class, Rajpura. Thereafter, the petitioners filed revision petition before Additional Sessions Judge, Patiala, which was dismissed on 20.11.2014. Subsequently, FIR No.38 dated 04.02.2014 under Sections 498-A, 406, 323 IPC was also registered at Police Station

Farakpur, District Yamuna Nagar by petitioner No.1 against the respondents wherein they have already put in appearance. Similarly, a petition under Section 125 Cr.P.C. as well as a complaint under the Act 2005 are also pending. Petitioner No.1 has also filed a transfer application to transfer the divorce case filed by respondent No.2 from Rajpura to Yamuna Nagar, before this Court, which is still pending. Similarly, FIR No.104 dated 21.03.2014 registered under Sections 498-A, 406 IPC at Police Station Farakpur, District Yamuna Nagar, a petition under Section 125 Cr.P.C. and a complaint under the Act 2005 filed by petitioner No.2 are also pending.

Learned counsel for the petitioners submits that the distance between Yamuna Nagar and Rajpura is about 100 kms and it is very difficult for the petitioners to defend themselves as they have to appear in the Court on each and every date of hearing. Moreover, the petitioners are being threatened by the respondents constantly. The petitioners are facing economic hardship as they are not having any source of income and the amount of maintenance as awarded by the trial Court has not been paid to them. Learned counsel further submits that even the amount of ₹10,000/-, which was ordered to be paid to each petitioner by this Court at the time the case was referred to Mediation and Conciliation Centre, has not been paid. Learned counsel also submits that if all the cases are heard at one place, it would be convenient to the parties in view of their poor financial

condition. The petitioners would be in a position to get justice as they are being threatened by the respondents on the dates fixed in the case.

Learned counsel for the respondents submits that the respondents are not in a position to bear the expenses or to pay the amount of arrears of maintenance. Out of total amount of arrears of maintenance, some of the amount has been paid to the petitioners. Respondents No.2 and 3 are ready to settle the dispute with the petitioners but it is only the petitioners, who are not interested in settlement.

Heard arguments of learned counsel for the petitioners as well as learned counsel for the respondents.

The factum of pendency of cases at Yamuna Nagar has not been disputed by learned counsel for the respondents. The prayer of the petitioners is that both the petitioners are not having any source of income and they are unable to afford the travelling as well as other expenses for attending the case at Rajpura. Except one complaint, the other cases are pending at Yamuna Nagar. The prayer for transfer of the case has been opposed only on the ground that the respondents are poor persons and they cannot afford to go to Yamuna Nagar.

It is well settled position of law that a litigant cannot choose a Bench or Court of his/her own choice. It is only in

exceptional circumstances where existence of bias or likelihood of bias is there.

In the present case, none of the above situation is there and prayer for transfer of the case has been made only on the ground that the cases filed by the petitioners are pending at Yamuna Nagar and only one complaint is pending at Rajpura. Both the petitioners are not earning anything and are being harassed by the respondents constantly. Even the arrears of maintenance has not been paid. The present case was referred to Mediation and Conciliation Centre of this Court and it was ordered that the respondent-husband would pay an amount of ₹10,000/- to each of the petitioner so that the petitioners may appear before the Mediation and Conciliation Centre but inspite of aforesaid directions issued by this Court, no amount has been paid so far. During the course of hearing, learned counsel for the respondents submits that the respondents-husbands are not in a position to pay arrears of maintenance as well as the amount, which has been ordered to be paid to the petitioners by this Court.

The High Court has the judicial power to transfer the case under Section 407 Cr.P.C., which lays down that where it will tend to the general convenience of the parties or witnesses, or where it was expedient for the ends of justice, the High Court can transfer such a case for trial to the other Court. Undisputedly, the High Court has judicial power to transfer the case to one Court or another under

Section 407 Cr.P.C. It also has the administrative power to transfer a case from one court to another under Article 227 of the Constitution of India. The High Court has superintendence over all the courts and tribunals throughout the territories in relation to which it exercises jurisdiction and as such, the High Court can transfer a case from one Court to another but for that it is to be seen whether there are reasons to be recorded that such power is exercised for administrative exigency, without causing prejudice or affecting the rights and interests of the parties.

In the present case, it would not only be convenient to the petitioners but to the respondents as well because all the cases are pending at Yamuna Nagar except one complaint, which is pending at Rajpura. Moreover, the petitioners are not having any source of income and everytime they have to appear on the date fixed at Rajpura. The respondents have not yet paid any amount of arrears of maintenance inspite of pendency of the petition and even the amount of ₹10,000/- awarded by this Court, has not been paid to the petitioners. Thus, it would be in the interest of both the parties in case, the criminal complaint pending before Sub Divisional Judicial Magistrate, Rajpura be transferred to the Court of competent jurisdiction at Yamuna Nagar where other cases are pending.

In view of the facts as mentioned above, the present petition is allowed and the criminal complaint No.79RT/2013 titled as

“Surmukh Singh vs. Ram Lubhaya and others” under Sections 452, 323, 325, 506, 500 read with Section 34 IPC is directed to be transferred from the Court of Sub Divisional Judicial Magistrate, Rajpura to the Court of competent jurisdiction at Yamuna Nagar, Jagadhri where the other cases filed by the petitioners are pending.

Both the parties are directed to be present before said Court on 11.01.2016.

14.12.2015
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(DAYA CHAUDHARY)
JUDGE