

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Transfer Application No. 668 of 2012 (O&M)
Date of decision: 22.4.2015

Kanwaljit Kaur

.. Petitioner

v.

Vikramjit Singh

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. D. S. Gurna, Advocate for the petitioner.

Mr. Kulwant Singh, Advocate for the respondent.

...

Rajesh Bindal J.

Prayer in the present petition filed by the petitioner-wife is for transfer of divorce petition filed by the respondent-husband at Karnal to the court of competent jurisdiction at Patiala.

Learned counsel for the petitioner submitted that marriage between the parties was solemnised on 7.3.2005. Out of the wedlock, a female child was born on 8.8.2006. The petitioner was shunted out of the matrimonial home. She is presently living with her parents at village Heera Garh (Dera), District Patiala. FIR No. 31 dated 3.10.2012 was got registered by the petitioner under Sections 498-A, 406, 323, 506 IPC at Police Station, Women Cell, Patiala. The daughter was forcefully retained by the respondent. She filed a petition for custody of the minor child at Patiala in October, 2012. It was thereafter that the respondent filed the divorce petition at Karnal. Besides the trial in the FIR got registered by the petitioner, application filed under Section 125 Cr.P.C. for maintenance is also pending at Patiala. The petition for custody of the minor child filed by the petitioner at Patiala was transferred to Karnal as the court at Patiala

lacked jurisdiction. In terms of the order dated 2.4.2013, passed by this court in Crl.W.P. No. 103 of 2013, the petitioner has been granted visiting rights thrice in a month to meet the child in the school after school hours. There is a danger to the life of the petitioner if she visits Karnal to meet the child. It was further submitted that she is facing difficulty in meeting the child in the school after school hours, as the same is located in the outskirts of the city. A prayer has been made for granting visiting rights in the court complex itself. Considering the fact that the petitioner does not have any source of income and she is dependent upon her parents, the divorce petition filed by the respondent-husband be transferred from Karnal to Patiala.

On the other hand, learned counsel for the respondent submitted that in October, 2011, the petitioner left the matrimonial home leaving the minor child without informing the respondent. The minor child is being taken care of by the mother of the respondent. She has been got admitted in Doon International School at Karnal. The conduct of the respondent and his family members is evident from the fact that 11 kanals and 2 marlas of land was purchased in the name of the petitioner by the father of the respondent. Arrangements were made even for her studies as she passed her B.Ed. examination after marriage. It was further submitted that besides the petition for custody of the child filed by the petitioner pending at Karnal, which she is to prosecute, she had been regularly visiting Karnal to meet the child in terms of the order passed in Crl. W.P. No. 103 of 2013 filed by her. Besides this, a suit for permanent injunction filed by the daughter of the petitioner restraining the petitioner from alienating the property is also pending at Karnal, in which the petitioner is appearing. In the application filed under Section 125 Cr.P.C., maintenance of ₹ 3,000/- per month has been fixed, which is being paid regularly. The respondent is to take care of the minor daughter, aged 9 years, who is studying in a school. The petitioner had been regularly visiting Karnal to meet the child and also take care of the cases. No untoward incident had ever happened, hence, the ground raised regarding danger to her life is totally misconceived. Once the petitioner is regularly visiting Karnal, she can

attend the hearing in the divorce petition as well. The respondent does not have any objection in case the date of hearing in any of the cases filed or being defended by the petitioner is given as per her convenience, when she visits Karnal to meet the daughter. He further submitted that the respondent does not have any objection to petitioner's meeting the child in the court complex itself and the respondent will bring the child at the designated place and time.

Heard learned counsel for the parties and perused the paper book.

No doubt, for the purpose of transfer of the cases, especially in matrimonial disputes, primarily the convenience of the wife is seen considering her status. However, another important aspect is the number of cases pending at a place. Transfer of the case to a place convenient to wife is directed by the court normally finding that all other litigations are pending at that place and only one isolated case initiated by the husband is pending at another place.

In the case in hand, trial in FIR No. 31 dated 3.10.2012 is pending against the respondent and his family members at Patiala in which, according to counsel for the petitioner, even charges have been framed. Another litigation stated to be pending at Patiala is an application filed by the petitioner under Section 125 Cr.P.C. As against this, at Karnal, where the husband is residing, a petition for custody of the child initially filed by the petitioner at Patiala, is pending after it was transferred to Karnal, being the court of competent jurisdiction, as the minor child is living with the father at Nissing (Karnal). A suit for permanent injunction filed by the daughter restraining the petitioner from alienating 11 kanals and 2 marlas of land purchased by the father of the respondent in the name of the petitioner is pending at Karnal. Besides this, the petitioner is regularly visiting Karnal to meet the minor daughter in terms of the order passed by this Court in Crl.W.P. No. 103 of 2013. Maintenance of ₹ 3,000/- per month, as fixed in an application filed by the petitioner, is being paid regularly. It is further relevant to mention here that the application under Section 125 Cr.P.C. is not the kind of proceedings which require long trial. These are

comparatively summary in nature as merely the amount of maintenance is to be fixed.

Considering the aforesaid factual matrix, balancing the equities and considering convenience of the parties, in my opinion, it is not a fit case where the divorce petition filed by the respondent at Karnal deserves to be transferred to Patiala. The petitioner is regularly attending the petition filed for custody of the child filed by her which is pending at Karnal. Besides this, she is defending the suit for permanent injunction filed by her daughter restraining her from alienating the land purchased in her name by the father of the respondent. In addition, as per the arrangement made by this court in Crl.W.P. No. 103 of 2013, the petitioner is regularly visiting Karnal to meet the minor child in the school after school hours, which necessarily would mean meeting on a working day. When the petitioner is visiting Karnal for all the aforesaid purposes, she can very well attend hearing of the petition for divorce filed by the respondent against her, which is pending at Karnal.

Still considering the convenience of the parties, especially the petitioner, liberty is granted to the petitioner that she can make a request to the courts concerned, where the cases are pending at Karnal, to give dates to her as per her convenience, whenever she is visiting Karnal either to attend the hearing of other case or to meet the child. The courts concerned are also expected to take care of the situations, where minimum harassment is caused to the petitioner. As three cases are pending at Karnal, may be pending in different courts, the learned Civil Judge (Senior Division), Karnal can also examine the desirability of transferring the suit for injunction filed by the daughter of the petitioner against her to the court where the petition filed by her seeking custody is pending.

As far as visiting rights of the petitioner are concerned, learned counsel for the petitioner has expressed difficulty in meeting the child in the school after school hours, in view of the fact that the school is situated at a place, which is outside the city. She has requested for meeting the child in the court, to which learned counsel for the respondent did not have any objection. This Court in TA No. 179 of 2013—Milan Priya Dua v. Dr. Chandan Dua, decided on 24.3.2015, had directed as under:

“Before parting with the order, this court would like to make observation regarding visiting rights of the parties to meet their children. Many times the orders are passed for fixing the place of meeting in the court, as is in the case in hand as well. The atmosphere in the court is not such, where the child of a tender age should be asked to come to meet his/her father/mother or any other family members. Instead of that, it would be appropriate, if at all, the court is to be fixed as a meeting place, it should be in the ADR Centres, which are existing in all the districts, where the atmosphere is quite congenial. For the purpose, if required, it can be under the supervision/guidance of the Secretary, District Legal Services Authority or any other officer/official working in the ADR Centres.”

As per the directions already issued by this court in CrI.W.P. No. 103 of 2013, the petitioner has been given liberty to meet the child in the school after school hours in the presence of Principal or an authorised person thrice a month for an hour each. The petitioner is to give prior intimation of the scheduled meeting to the respondent. While not disturbing the terms agreed and directed by this court in the aforesaid order, keeping in view the difficulties expressed and interest of the child, as agreed, the venue of meeting the child is shifted from school to office of the Secretary, District Legal Services Authority, Karnal. The date and time shall be intimated by the petitioner in advance to the respondent so as to enable him to make necessary arrangements to bring the child. Due care shall be taken regarding studies of the child. The date shall also be intimated to the office of the Secretary, District Legal Services Authority, Karnal.

With the aforesaid observations, the present petition stands disposed of.

(Rajesh Bindal)
Judge

22.4.2015
mk

(Refer to reporter)