

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

TA No.100 of 2014
Date of decision:27.02.2015

Harjit Kaur

....Petitioner

Versus

Jagir Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Deepak Malhotra, Advocate, for the petitioner.

None for the respondent.

G.S.Sandhawalia J.(Oral)

By way of the present transfer application, the wife has sought transfer of the petition filed under Section 13 of the Hindu Marriage Act, 1955 (for short, the 'Act'), from the Court of District Judge, Hoshiarpur, to the competent Court at Ludhiana.

It is averred in the application that the marriage was solemnised at Ludhiana on 14.10.1998 and two children had been born out of the wedlock, who are residing with the respondent-husband. The wife was turned out of the matrimonial home on 25.07.2012 and she filed an application for maintenance under Section 125 of the Cr.P.C. on 26.11.2012, before the Judicial Magistrate, Ludhiana. The husband filed the divorce petition on 27.11.2012 in the Court of District Judge, Hoshiarpur. It is stated in the application that the wife has to travel about 180 kms. from Hoshiarpur to Ludhiana. It is, accordingly, submitted that it is difficult for the wife to travel alone to contest the proceedings at a distant place.

Notice was issued in the present application and even further proceedings before the Trial Court were ordered to be stayed. None has put in

appearance on behalf of the respondent-husband to contest the petition.

Counsel for the petitioner has, accordingly, submitted that a paltry amount of ₹800/- has been awarded as maintenance and for the respondent-wife, it is very difficult to contest the dispute at Hoshiarpur and further submitted that keeping in view the fact that the proceedings are already pending at Ludhiana *inter se* the parties and the husband is already putting in appearance, it would not cause any hardship to the husband since he has to anyway attend to the said proceedings at Ludhiana.

Keeping in view the above, this Court is of the opinion that relevant considerations of transfer of case are clearly made out, keeping in view the fact that the wife has to travel a distance of about 3 hours, to attend the proceedings at Hoshiarpur and it would only be convenient if the matter is adjudicated at Ludhiana as the husband has to attend the proceedings under Section 125 of Cr.P.C., which are already pending. Admittedly, the Court at Ludhiana also has jurisdiction since the marriage was performed at Ludhiana, as per the averments made in the petition filed under Section 13 of the Act. Thus, it is not that the Court at Ludhiana has no jurisdiction at all under the Act. The Apex Court in **Kulwinder Kaur Vs. Kandi Friends Education Trust & others (2008) 3 SCC 659** has laid down the principles regarding the power of transfer to hold that where more than one Court has jurisdiction, there would be no hesitation to transfer the case, even if it causes inconvenience to the plaintiff. Relevant observations read as under:

“21. Having considered rival contentions of the parties and having gone through the proceedings of the case, we are of the view that the impugned order deserves to be set aside. So far as the power of transfer is concerned, Section 24 of the Code empowers a High Court or a District Court to transfer inter alia any suit, appeal or other proceeding pending before it or in any Court subordinate to it to any other Court for trial and disposal. The said provision confers comprehensive power on the Court to transfer suits, appeals or other proceedings “at any stage” either on an application by any

party or suo motu.

22. Although the discretionary power of transfer of cases cannot be imprisoned within a strait-jacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection.

23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to plaintiff or defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; "interest of justice" demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a "fair trial" in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order."

Accordingly, keeping in view the above observations and the facts which has gone on uncontroverted, the present application is allowed. The District Judge, Hoshiarpur is directed to send the file of HMA No.193 dated 27.11.2012 titled *Jagir Singh Vs. Harjit Kaur* to the District Judge at Ludhiana, for assigning to the competent Court or to keep in his Court.

Parties shall put in appearance before the said Court at Ludhiana on 01.04.2015.

With the above observations, the present revision petition stands allowed.

27.02.2015

SAILESH RANJAN
2015.03.16 15:53
I attest to the truth and
integrity of this document

sailesh

(G.S.SANDHAWALIA)
JUDGE