

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

TA No. 249 of 2016

Date of decision: 5.4.2016

Parveen

.. Applicant

Vs.

Dipti

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Narinder Pal Bhardwaj, Advocate
for the applicant

RAMESHWAR SINGH MALIK, J. (Oral)

Applicant-husband, by way of instant transfer application under Section 24 of the Code of Civil Procedure, 1908, seeks transfer of his own case bearing No. 95 of 2015, filed by him under Section 9 of the Hindu Marriage Act, 1955, from Kaithal to Kurukshetra or Karnal.

Learned counsel for the applicant submits that in view of the law laid down by the Hon'ble Supreme Court in Satish Jaggi Vs. State of Chhattisgarh and others, 2007 (3) SCC 62, petition filed by the applicant under Section 9 of the HM Act deserves to be transferred from Kaithal to Kurukshetra or Karnal. He further submits that Ms. Nandita Kaushik, Additional Civil Judge, (Sr. Division), Kaithal, is a close relation of respondent No. 2 and she is unduly influencing the proceedings of the petition under Section 9 of the HM

Act filed by the applicant because of which, the applicant is having a bonafide apprehension that he will not get justice at the hands of learned court of competent jurisdiction at Kaithal. He prays for allowing the present application.

Having heard the learned counsel for the applicant at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the allegations levelled by the applicant against the Judicial Officer are baseless, false and frivolous. In fact, allegations are being levelled only for the sake of levelling the allegations. It seems that applicant has no respect for the justice delivery system. He is trying to take the courts for a ride.

So far as the judgment relied upon by the learned counsel for the applicant is concerned, there is no dispute about the law laid down therein. However, on a close perusal of the cited judgment, the same has not been found of any help to the applicant, being clearly distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

It is pertinent to note here that Ms. Nandita Kaushik came to be posted at Kaithal in the month of April, 2015, whereas, the applicant filed his petition under Section 9 of the HM Act at Kaithal in

the month of August, 2015, which is a matter of record. Learned counsel for the applicant sought to justify this action of the applicant contending that, at that point of time, applicant was also posted at Kaithal. Thereafter, the applicant has been placed under suspension. However, no reason much less cogent reasons has been pointed out as to how the suspension of the applicant would be a ground for transferring his own petition under Section 9 of the HM Act from Kaithal to Kurukshetra or Karnal.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court: -

- 1. Mrs. Maneka Sanjay Gandhi and another Vs. Miss Rani Jethmalani, AIR 1979 (SC) 468.**
- 2. Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4.**
- 3. Neelam Kanwar Vs. Devinder Singh Kanwar, 2000 (10) SCC 589.**
- 4. Sumita Singh Vs. Kumar Sanjay and another, AIR 2002 (SC) 396.**
- 5. Mangla Patil Kale Vs. Sanjeev Kumar Kale, 2003 (10) SCC 280.**
- 6. Fatema Vs. Jafri Syed Husain @ Syed Parvez Jaffer, AIR 2009 (SC) 1773.**
- 7. Anjali Ashok Sadhwani Vs. Ashok Kishinchand Sadhwani, AIR 2009 (SC) 1374.**
- 8. Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust and others, AIR 2008 SC 1333.**
- 9. Nisha Vs. Dharmenda Pratap Singh Rathore, 2015 (3) All. LJ 168.**
- 10. M.V. Rekha Vs. Sathya, 2011 (2) HLR 34.**

11. Sneha Vs. Vinayak, 2013 ILR (Karnataka) 165.

12. Rimpal Vs. Balinder Kumar, 2010 (7) RCR (Civil) 286.

13. Anju Vs. Sanjay, 2011 (6) RCR (Civil) 112.

14. Komal Devi @ Komal Kumari @ Komal Rani Vs. Harbhajan Singh, 2012 (8) RCR (Civil) 84.

The relevant observations made by the Hon'ble Supreme Court in para 14 of its judgment in **Kulwinder Kaur @ Kulwinder Gurcharan Singh's** case (supra), which can be gainfully followed in the present case, read as under: -

“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. 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.”

Again, deliberating on an identical issue, in the case of **Dr. Subramaniam Swamy Vs. Ramakrishna Hegde, 1990 (1) SCC 4**, the Hon'ble Supreme Court held as under: -

“The question of expediency would depend on the facts and circumstances of each case but the paramount consideration for the exercise of power must be to meet the ends of justice. It is true that if more than one court has jurisdiction under the Code to try the suit, the plaintiff as dominus litis has a right to choose the Court and the defendant cannot demand that the suit be tried in any particular court convenient to him. The mere convenience of the parties or any one of them may not be enough for the exercise of power but it must also be shown that trial in the chosen forum will result in denial of justice. Cases are not unknown where a party seeking justice chooses a forum most inconvenient to the adversary with a view to depriving that party of a fair trial. The Parliament has, therefore, invested this Court with the discretion to transfer the case from one Court to another if that is considered expedient to meet the ends of justice. Words of wide amplitude- for the ends of justice- have been advisedly used to leave the matter to the discretion of the apex court as it is not possible to conceive of all situations requiring or justifying the exercise of power. But the paramount consideration must be to see that justice according to law is done; if for achieving that objective the transfer of the case is imperative, there

should be no hesitation to transfer the case even if it is likely to cause some inconvenience to the plaintiff. The petitioner's plea for the transfer of the case must be tested on this touchstone.

(emphasis supplied)”

Reverting to the fact situation obtaining in the present case and respectfully following the law laid down by the Hon'ble Supreme Court, it is unhesitatingly held that interest of justice does not warrant transfer of the petition filed by the applicant himself from Kaithal to Kurukshetra. Apprehension of the applicant is baseless and arguments raised on his behalf have been found to be misplaced.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant transfer application is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant transfer application stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)
JUDGE**

5.4.2016
AK Sharma