

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

TA No.664 of 2015

Date of decision: 11.04.2016

Manpreet Kaur

... Applicant

Vs.

Rakesh Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. F.S. Virk, Advocate
for the applicant.

Mr. G.S. Ghuman, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J. (ORAL)

Applicant, by way of instant application under Section 24 of the Code of Civil Procedure, seeks transfer of a petition under Section 9 of the Hindu Marriage Act, 1955 (for short 'HM Act') titled as Rakesh Kumar Vs. Manpreet Kaur filed by the respondent-husband from SAS Nagar (Mohali) to Patiala.

Notice of motion was issued and further proceedings before the learned trial Court were stayed.

Heard learned counsel for the parties.

It has gone undisputed before this Court that applicant-wife along with her minor child, is living with her parents at Patiala. The child is

pursuing his study at Patiala. Applicant is serving at Patiala. No other litigation is pending between the parties except the abovesaid petition under Section 9 of the HM Act filed by the respondent-husband, which is sought to be transferred from Mohali to Patiala. Distance between Mohali and Patiala is about 60 kilometers.

In view of the abovesaid fact situation obtaining in the present case, this Court is of the considered opinion that present transfer application deserves to be allowed. It is so said because responsibility of the wife for bringing up the children and distance between two places, besides her convenience, are some of the relevant considerations for deciding the transfer applications, like the present one.

The abovesaid view taken by this Court also finds support from the order dated 16.03.2016 passed by this Court in TA No.945 of 2015 (Sushma and others Vs. Kapil @ Sahil Bansal), which, in turn, was based on the judgments of the Hon'ble Supreme Court, as well as different High Courts, including this Court.

So far as the judgments relied upon by learned counsel for the respondent in **Lila Sahu Vs. Kailash Narayan Sahu, 1991 (1) HLR 518, T. Sareetha Vs. T. Venkata Subbalah, AIR 1983 (A.P.) 356 and Pushpa Datt Mishra Vs. Smt. Archana Mishra alias Premvati Choubey, AIR 1992 Madhya Pradesh 260** are concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgments, none of them has been found of any help to the respondent, these being distinguishable on facts. It is the settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and

appreciated first before applying any codified or judgemade law thereto. Each case has to be decided as per its own peculiar fact situation. Sometimes difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

In addition to the above, the abovesaid view taken by this Court on merits 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 Jafferi, 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 **Dr. Subramaniam Swamy's** case (supra), which can be gainfully followed in the present case, read 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)”

The law laid down by the Hon'ble Supreme Court in para 14 of its judgment in **Kulwinder Kaur @ Kulwinder Gurcharan Singh's** case (supra), which aptly apply to the facts of the present case, reads 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.”

Reverting to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as different High Courts, including this Court in the cases referred to hereinabove, it is unhesitatingly held that the petition under Section 9 of the HM Act filed by the respondent-husband deserves to be transferred from SAS Nagar (Mohali) to Patiala.

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 deserves to be accepted and the same is hereby allowed. Petition under Section 9 of the HM Act titled as Rakesh Kumar Vs. Manpreet Kaur filed by the respondent-husband at SAS Nagar (Mohali) is ordered to be transferred to Patiala.

Accordingly, learned District Judge, SAS Nagar (Mohali) is directed to send the complete record of the petition under Section 9 of the HM Act filed by the respondent-husband, to the learned District Judge,

Patiala at an early date and in any case within a period of one month from the date of receipt of certified copy of this order.

Learned District Judge, Patiala is also directed either to decide the case himself or assign it to the learned Court of competent jurisdiction for its early decision, in accordance with law.

With the abovesaid observations made and directions issued, instant transfer application stands disposed of, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

11.04.2016
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