

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

CRM-M-40915-2016

Date of decision: 03.08.2017

Rajesh Kumar and others

...Petitioners

Versus

Suman

...Respondent

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Jitender Sharma, Advocate,
for the petitioners.

Mr. Hakam Singh, Advocate,
for the respondent.

Mr. Ajay Kaushik, Mediator.

JAISHREE THAKUR, J. (ORAL)

1. The instant petition under Section 407 Cr.P.C. has been filed by the petitioners for transfer of Criminal Complaint No. 101 of 2016 instituted on 14.09.2016, titled "Suman Vs. Rajesh etc." under Section 12 read with Sections 18 to 23 of the Protection of the Women from Domestic Violence Act, 2005, pending in the Court of Ms. Shifa, Sub Divisional Judicial Magistrate, Hansi to a Court of competent jurisdiction.

2. The instant petition has been filed at the behest of the husband of the complainant Smt. Suman and his family members. A marriage was solemnized between petitioner No.1 and respondent Suman on 24.01.2015. Out of this wedlock twins were born. It is alleged that on account of differences, respondent complainant left her matrimonial home on 05.12.2015. Thereafter respondent wife filed a complaint on 08.12.2015 before the Women Cell, Hissar but the same was filed as the respondent did

not proceed with the said complaint but after dismissal of the same the respondent filed another Criminal Complaint No. 101 of 2016 on 14.09.2016, titled "Suman Vs. Rajesh etc." under Section 12 read with Sections 18 to 23 of the Protection of the Women from Domestic Violence Act, 2005, instituted in the Court of Ms. Shifa, Sub Divisional Judicial Magistrate, Hansi, out of which the instant transfer petition has arisen.

3. Learned counsel for the petitioners contend that on 26.10.2016 at around 9.30 a.m., petitioner No.1 who was going from his residence to his place of work, was attacked by the brother of respondent and his friends, who gave petitioner No.1 rod and brick blows, which caused him grievous injuries. On account of the injuries suffered he remained admitted in the Civil Hospital, Gurugram from 26.10.2016 to 27.10.2016. In this regard an FIR No. 1193 dated 27.10.2016 was registered with Police Station Sadar Gurugram under Sections 147, 149, 323, 325, 506 IPC against the brother of the complainant and his friends. It is argued that the case has been filed at Hansi and petitioner No.1 and his family members apprehend danger to their life in case they attend the Court at Hansi which is the home town of the respondent wife. It is prayed that the Criminal Complaint No. 101 of 2016 instituted on 14.09.2016, titled "Suman Vs. Rajesh etc." under Section 12 read with Sections 18 to 23 of the Protection of the Women from Domestic Violence Act, 2005, in the Court of Ms. Shifa, Sub Divisional Judicial Magistrate, Hansi be transferred to any other Court of competent jurisdiction other than at Hansi or close to its vicinity.

4. Per contra, learned counsel appearing on behalf of the respondent wife contends that all allegations are false and that no such

incident took place as alleged in the FIR No. 1193 dated 27.10.2016. It is further argued that it is not possible for the respondent to travel out of Hansi on account of the fact that she has two minor children to look after. It is prayed that the proceedings under the Domestic Violence Act be permitted to continue at Hansi or in the alternative has prayed that the matter be transferred to the closest place which would be Hissar.

5. I have heard learned counsel for the parties and have also perused the records of the case.

6. Admittedly, a dispute has arisen in between petitioner No.1 and the respondent. An attempt was made by this Court to settle the dispute amicably keeping in view the fact that there are two minor children involved. The matter was referred to Mediation, however, said mediation has failed. The Mediator Mr. Ajay Kaushik, who is present in the Court, submits that despite an earnest effort to settle the dispute, the mediation has not resulted in any success as both parties are adamant and various litigations are pending against each other.

7. The prayer in the instant petition is for transfer of the petition filed under the Domestic Violence Act from Hansi to any other Court on account of fear to the life of petitioner No.1 and his family members who have been summoned. The plea to transfer the matter to Hissar, was strongly opposed on the ground that the respondent's family members i.e. uncle of the respondent is working in the Police and there is an apprehension that there would be interference/threat to the welfare of petitioner No.1 and his family members.

8. Normally this court would not interfere in a matter asking for transfer of a petition at the behest of the husband since the convenience of the wife who has minor children to look after has to be of paramount concern. But in the instant case, it is to be noted that there is an FIR that has been filed against the family members of the respondent wife under Sections 147, 149, 323, 325, 506 IPC on the ground that petitioner No.1 herein had suffered grievous injury at their hand. The petitioner No 1 remained admitted to hospital. Even though investigation in the said FIR is still in progress as noted by this Court, the fear of the petitioners seems to be apparently justified in going to Hansi to attend the Court case. The plea as raised by counsel for the respondent that it would not be possible for the respondent to travel out of Hansi on account of two minor children is not sustainable at the present moment on account of the fact that she is residing with her father, mother, brother and sister-in-law, who would be in a position to look after the interest of the minor children in case the respondent has to travel. Therefore, keeping in overall view of the fact, it would be expedient to transfer the matter from the Court at Hansi. The closest place in fact would be at Hissar but it is not disputed by the respondent, who is present in the Court, that her uncle is working in Police at Hissar and since the possibility of interference by him cannot be ruled out, let this matter be transferred to a Court of competent jurisdiction at Kaithal. The parties are directed to appear before the Court of the Chief Judicial Magistrate, Kaithal on 01.09.2017.

9. The Sub Divisional Judicial Magistrate, Hansi is directed to send the record of the Criminal Complaint No. 101 of 2016 instituted on

14.09.2016, titled “Suman Vs. Rajesh etc.” under Section 12 read with Sections 18 to 23 of the Protection of the Women from Domestic Violence Act, 2005, to the Court of Chief Judicial Magistrate, Kaithal forthwith on receipt of certified copy of this order.

03.08.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.