

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

TA No.523 of 2018 (O&M)
Date of Decision: 16.08.2018

Sangeeta @ Sunita

...Petitioner

Versus

Manjeet

....Respondent

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. S.P. Chahar, Advocate for the petitioner.

Mr. Mahavir Singh, Advocate for the respondent.

B.S.WALIA, J. (Oral)

1. Petition has been filed under Section 24 read with Section 151 CPC praying for transfer of petition under Section 13, Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act), titled as 'Manjeet vs. Sangeeta @ Sunita' (Annexure P-1) filed by the respondent against the petitioner, from the Court of the learned District Judge (Family Court) Sonapat to the Court of competent jurisdiction at Jhajjar.

2. Learned counsel for the petitioner contended that earlier a petition under Section 13 with alternative plea U/s 11 of the Act was filed by the respondent against the petitioner at Sonapat in the year 2012. The petitioner filed a petition seeking transfer of the said petition under Section 13 of the Act, from the Court of the learned District Judge, Sonapat to the court of competent jurisdiction at Jhajjar on the ground that she had been turned out from the matrimonial home and was staying along with her parents and minor daughter. In response to the notice issued in TA No.610

of 2012, none appeared on behalf of the respondent. Consequently, a co-ordinate Bench of this Court in the light of decision in Sumita Singh Vs. Kumar Sanjay and another, AIR 2002 SC 396, allowed the transfer petition and transferred the petition under Section 13 of the Act, i.e. titled as 'Manjit vs. Sangeeta @ Sunita' pending in the Court of the learned District Judge (Family Court), Sonapat to the court of competent jurisdiction at Jhajjar.

3. Learned counsel contends that pursuant to the transfer of the petition under Section 13 of the Act from the competent court at Sonapat to Jhajjar, vide orders dated 18.02.2013 in TA No.610 of 2012 the respondent compromised the divorce petition with the petitioner vide statement dated 23.11.2013 (Annexure P-3) and withdrew the divorce petition and the parties started residing together at Sonapat. The petitioner also withdrew the petition filed by her under Section 125 Cr.P.C., vide order dated 23.11.2013. In view of the compromise between the parties, the petitioner and her parents also did not pursue the criminal case registered against the respondent vide FIR No.353 dated 02.06.2012, at Police Station, Jhajjar under Section 498-A and 406, Indian Penal Code. Resultantly, the same also resulted in acquittal of the respondent as well as his parents. Thereafter, again the respondent turned out the petitioner and her daughter from the matrimonial home on 07.08.2017 and on 08.03.2018 the petitioner filed a petition under Section 125 Cr.P.C. at Jhajjar claiming maintenance for herself as well as for her daughters as one more daughter was born after she had resided with the respondent pursuant to the compromise in the year 2015. On the other hand, the respondent filed a petition against the

petitioner before the learned District Judge/Family Court, Sonapat under Section 13 of the Act for divorce on the ground that the petitioner had acted with cruelty towards the respondent and his parents as she had registered a false FIR and the same had culminated in acquittal of the respondent and his parents vide judgment dated 04.12.2013 passed by the learned Chief Judicial Magistrate, Jhajjar. It may be mentioned here that the petition for divorce was filed by the respondent on the ground of acquittal dated 04.12.2013 and that too after a daughter had been born in the year 2015 to the parties.

4. Learned counsel for the respondent has vehemently opposed the transfer petition on the ground that the petition under Section 125 Cr.P.C. had been filed by the petitioner five months after filing of the divorce petition, that the behavior of the petitioner towards the respondent and his family was very insolent besides the petitioner was compelling the respondent to reside separately from his parents in the city.

5. I have considered the submissions of learned counsel for the parties and am of the considered view that in matrimonial proceedings initiated by the husband against the wife, convenience of the wife has to be looked into. It is the admitted position that the petitioner is residing at Jhajjar with her parents and two minor daughters aged 3 and 6 years respectively. The facts of the case go to show beyond an iota of doubt that initially also respondent had moved a petition for divorce under Section 13 with alternative relief U/s 11 of the Act at Sonapat and the same was transferred to Jhajjar on transfer application No.610 of 2012 filed by the petitioner. At that point of time none had put in appearance on behalf of the

respondent, therefore, the matter was transferred to the court of competent jurisdiction at Jhajjar by taking into account the convenience of the wife. After the transfer of the divorce petition from Sonapat to Jhajjar, the matter was compromised by the respondent and the parties started residing together at Sonapat. So much so, the petitioner made a statement before the learned Judicial Magistrate 1st Class, Jhajjar that she did not want to pursue the petition under Section 125 Cr.P.C. resulting in the same being dismissed as withdrawn vide order (Annexure P-4). The petitioner also did not pursue FIR No.353 dated 02.06.2012 under Section 498-A and 406 IPC registered at Police Station, Jhajjar against the respondent and his parents, resulting in the acquittal of the respondent as well as his parents vide judgment dated 04.12.2013. After having compromised the matter, the parties started residing together at Sonipat whereafter another daughter was born to the parties in the year 2015. However, in August, 2017, the petitioner was again turned out from the matrimonial home along with her elder daughter aged 6 years while younger daughter aged 3 years was kept by the respondent. After turning out the petitioner from the matrimonial home, the respondent filed a petition for divorce under Section 13 of the Act, before the competent Court at Sonapat.

6. I have no hesitation in mind, that in view of the law laid down in Sumita Singh's case (supra), as well as in view of the facts of the instant case, it is the convenience of the wife which is to be looked into and accordingly, the instant petition under Section 13 of the Act titled as 'Manjit Vs. Smt. Sangeeta @ Sunita' pending in the Court of the learned District Judge (Family Court), Sonapat is hereby ordered to be withdrawn

from the said Court and is transferred to the Court of competent jurisdiction at Jhajjar for disposal in accordance with law from the stage of withdrawal. The petitioner having been forced to invoke the jurisdiction of this Court besides respondent having forcefully contested the transfer petition, the same is allowed, subject to costs/litigation expenses of ₹20,000/- payable by the respondent to the petitioner.

(B.S.WALIA)
JUDGE

16.08.2018
rajesh k.khurana

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No