

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

CRM-M-47359 of 2018.

Decided on:- October 17, 2019.

Gurinder Raj Singh.

.....Petitioner.

Versus

Parminder Kaur and another

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.**

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Present:- Mr. Bhriugu Dutt Sharma, Advocate  
for the petitioner.

None for the respondents.

**HARI PAL VERMA, J.**

The petitioner has filed this petition under Section 482 Cr.P.C. impugning the order dated 03.10.2018 (Annexure P-5) passed by learned Sessions Judge, Fatehgarh Sahib, whereby the maintenance application under Section 125 Cr.P.C. titled as "*Parminder Kaur and another Versus Gurinder Raj Singh*" (Annexure P-2) instituted on 30.05.2017 was transferred from the Court of Sh. Himanshu Arora, Judicial Magistrate 1<sup>st</sup> Class, Fatehgarh Sahib to the Court of Smt. Neetika Verma, Chief Judicial Magistrate, Fatehgarh Sahib.

Briefly stated, the respondent No.1-wife has filed a petition under Section 125 Cr.PC for grant of maintenance for herself and for respondent No.2-minor daughter, which was pending before the Court of Shri Himanshu Arora, Judicial Magistrate 1<sup>st</sup> Class, Fatehgarh Sahib. The petitioner-husband had appeared before that Court and submitted his reply.

The case was fixed for evidence, but despite there being a number of

opportunities, the respondent-wife did not examine any witness and she filed an affidavit in evidence on 16.08.2018. Thereafter, the case was deferred for her cross-examination for 23.08.2018 and she was bound down to cause her appearance before the Court. However, on 23.08.2018 due to non-availability of the counsel for the petitioner, the case was adjourned to 13.09.2018. On 13.09.2018, the case was called for cross-examination of the respondent-wife, but she was not present in the Court for recording her cross-examination despite the fact that she was bound down for her appearance for 13.09.2018. Accordingly, learned Magistrate vide order dated 13.09.2018 issued bailable warrant of respondent No.1 Parminder Kaur for a sum of Rs.5,000/- with one surety in the like amount. The respondent No.1 intentionally did not put in appearance and she was watching the proceedings from outside as she was avoiding cross-examination so as to delay the proceedings. Thereafter, she suddenly appeared before the Magistrate at 12.30 P.M. on 13.09.2018 and since the counsel for the petitioner-husband was not available, the case was adjourned to 27.09.2018. In order to further delay the proceedings, she filed a transfer application seeking transfer of the petition under Section 125 Cr.PC before the Court of learned Sessions Judge, Fatehgarh Sahib levelling false and frivolous allegations against the Presiding Officer and vide impugned order dated 03.10.2018, learned Sessions Judge has transferred the petition filed by the respondent-wife from the Court of Shri Himanshu Arora, Judicial Magistrate 1<sup>st</sup> Class, Fatehgarh Sahib to the Court of Smt. Neetika Verma, Chief Judicial Magistrate, Fatehgarh Sahib.

Learned counsel for the petitioner-husband has argued that the only allegation levelled by the respondent-wife, while seeking transfer of the

petition under Section 125 Cr.P.C. is that on 13.09.2018 when the case was pending before learned Presiding Officer, he had misbehaved with the respondent-wife and her father, but the impugned order passed by learned Sessions Judge, Fatehgarh Sahib does reflect that instead of calling the report from the learned Presiding Officer, seeking comments/report from the learned Magistrate, learned Sessions Judge has issued notice to the petitioner through his counsel. Thus, the story projected by the respondent-wife has not been believed by learned Sessions Judge, but still vide impugned order dated 03.10.2018, without seeking any comment and going into the allegations levelled by the respondent-wife in the transfer application, learned Sessions Judge has mechanically transferred the petition under Section 125 Cr.P.C.

He has further argued that learned Sessions Judge could not transfer the case in such a casual manner and that too from one Magistrate to another Magistrate at the same station without seeking such comments. Mere allegation that there is an apprehension in the mind of the respondent-wife is not sufficient enough to order transfer of the case. Report is required as to whether the apprehension of the respondent-wife is reasonable or not. Seeking transfer of the case at the drop of a hat is inconceivable. The order of transfer is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about proper conduct of the trial. The power has to be exercised cautiously and in exceptional situation.

He has further contended that while transferring the petition under Section 125 Cr.P.C. from one Magistrate to another Magistrate, learned Sessions Judge has failed to consider that the respondent-wife has levelled allegations about the conduct of the Magistrate only on a particular date

without any basis, despite the fact that the case was pending since long. By not calling a report from the concerned Magistrate, learned Sessions Judge has transferred the case which is not legally sustainable. Transfer of the case on mere allegations is not permissible. In support of his contentions, he has referred to *Usmangani Adambhai Vahora Versus State of Gujarat 2016(1) RCR(Criminal) 731; Abdul Nazar Madani Versus State of Tamil Nadu 2000(2) RCR(Criminal) 770; Gurcharan Dass Chadha Versus State of Rajasthan AIR 1966 SC 1418* and *K.P. Tiwari Versus State of M.P. 1994 Supp.(1) SCC 540*.

I have heard learned counsel for the petitioner.

There is no dispute that a petition under Section 125 Cr.P.C. is pending between the parties. In addition to the petition under Section 125 Cr.PC, a divorce petition filed by the petitioner-husband under Section 13 of the Hindu Marriage Act, 1955 is also pending between the parties before the District Judge, Fatehgarh Sahib.

The argument of learned counsel for the petitioner-husband that the respondent-wife wanted to delay the proceedings on one pretext or the other, cannot be accepted particularly when she has filed the petition under Section 125 Cr.PC so as to claim maintenance and she will not gain anything from delaying the proceedings. While seeking transfer of the case, the respondent-wife has made an allegation that on 13.09.2018, when the case was fixed for cross-examination of respondent No.1-wife, she remained present in Court from 10.00 A.M. till evening. But in spite of her presence in the Court, learned Magistrate had told her that he will issue her bailable warrants. The respondent-wife and her father were present in the Court and

they were insulted by the concerned Magistrate. Thus, the respondent-wife has an apprehension that she may not get justice from the concerned Magistrate.

Though merely such apprehension is no ground to transfer the case from one Court to the other Court, but considering the fact that the respondent-wife has filed a petition under Section 125 Cr.PC and the case has been adjourned at different times, even on some stages, at the behest of the respondent-wife, in order to remove such apprehension, such transfer of the case can be effected. Vide impugned order dated 03.10.2018, while, transferring the petition under Section 125 Cr.PC from the Court of Shri Himanshu Arora, Judicial Magistrate 1<sup>st</sup> Class, Fatehgarh Sahib to the Court of Smt. Neetika Verma, Chief Judicial Magistrate, Fatehgarh Sahib, learned Sessions Judge has given a reasoning that justice is not only to be done, but it should appear to have been done.

Moreover, as provided under Section 408 Cr.P.C., the Sessions Judge is well competent to transfer a case from one criminal Court to another criminal Court in his sessions division and he can do so either on the report of the lower Court, or on the application of a party interested, or on his own initiative. The relevant provision as mentioned in Section 408(1) and (2) reads as under:

***“408. Power of Sessions Judge to transfer cases and appeals.—(1) Whenever it is made to appear to a Sessions Judge that an order under this sub-section is expedient for the ends of justice, he may order that any particular case be transferred from one Criminal Court to another Criminal Court in his sessions division.***

*(2) The Sessions Judge may act either on the report of the lower Court, or on the application of a party interested, or on his own initiative.”*

Therefore, this Court does not find any justification in interfering with the impugned order dated 03.10.2018 passed by learned Sessions Judge, Fatehgarh Sahib.

The present petition is, accordingly, dismissed.

**October 17, 2019**  
Yag Dutt

**(HARI PAL VERMA)**  
**JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No