

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

T.A. No. 635 of 2018

DATE OF DECISION :- May 13, 2019

Divya Gupta

...Applicant

Versus

Akshay Gupta

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Munish Sharma, Advocate for the applicant.

Mr. Udit Garg, Advocate for the respondent.

Applicant Divya Gupta, aged about 29 years, estranged wife of Akshay Gupta -respondent, presently residing with her parents at Panipat on account of matrimonial discord between the spouses, by way of filing the instant application seeks transfer of petition under Section 13 of the Hindu Marriage Act filed by her husband Akshay Gupta against her having title 'Akshay Gupta Vs. Divya Gupta' pending in the Court of District Judge, Family Court, Yamuna Nagar at Jagadhari to the Court of competent jurisdiction at Panipat

According to the applicant, the marriage was performed between the parties on 19.11.2013 at Jagadhari. Thereafter the spouses started residing together. The marriage was consummated. The applicant gave birth to a daughter presently aged about 4½ years, residing with her father-the respondent; that on account of demand of dowry, harassment and

maltreatment by the respondent and his family members, she was forced to leave the matrimonial home. She had no other place to go except her parents place. She has filed a petition under Protection of Women from Domestic Violence Act, 2005 against the respondent besides lodging an F.I.R. for offences under Sections 323/354/377/406/498-A/506/34 IPC against the respondent. She has also moved a petition seeking custody of the minor daughter of the parties. All these cases are pending in the Courts at Panipat. According the applicant, she does not have any source of income and it is difficult for her to travel from her parental place to Jagadhari covering a distance of 415 kms on both sides so as to attend the dates of hearing in the Court there, therefore, the application be accepted.

Notice of the application was given to the respondent, who has put in appearance through his counsel and is vehemently opposing the application contending that the respondent is taking care of minor daughter of the parties who is school going and he would be in great trouble if the petition in question is transferred from Jagadhari to Panipat.

I have heard learned counsel for the parties besides going through the record.

In view of contentions in the application which have been reiterated by learned counsel for the applicant during the arguments, balance is equally tilted in favour of the applicant. Though minor daughter of the parties is stated to be in custody of the respondent but then the applicant is said to have initiated proceedings to get the custody of that child and matter in that regard is stated to be pending in the Court at Panipat.

The Apex Court in various judgments has observed that in

matrimonial disputes between the spouses convenience of wife should be looked into. In that regard a reference can be made to authority **Sumita Singh Versus Kumar Sanjay and another, 2002 AIR(SC) 396** by a Division Bench of Hon'ble Supreme Court.

In **Bhartiben Ravibhai Rav Versus Ravibhai Govindbhai Rav, 2017(3) RCR(Civil) 369**, the Apex Court had allowed application for transfer of the divorce petition to a place where the wife was residing considering various factors including the distance between the place where the wife was residing and the place of sitting of the Court where divorce petition had been instituted and the fact that the wife had filed two cases against her husband in the Court at the place of her residence wherein the respondent had already put in appearance.

In **Apurva Versus Navtej Singh, 2017(2) Law Herald 966** by a Co-ordinate Bench of this Court, it was observed that wherever the Courts are called upon to consider the plea of transfer in matrimonial disputes, the Courts have to take into consideration various factors like economic soundness of either of the parties, the social strata of the spouses to which they belong and behavioural pattern, standard of life antecedents of marriage. Generally it is the wife's convenience, which must be looked at by the Courts while deciding the transfer application.

Keeping in view the contentions in the application and submissions made by learned counsel for the applicant, in which I find merit, in absence of any strong circumstance to the contrary, it would be proper and appropriate if the application is accepted. The same is accordingly allowed. The petition in question is ordered to be withdrawn

from the Court of District Judge, Family Court, Yamuna Nagar at Jagadhari and transferred to Family Court at Panipat for disposal in accordance with law.

The parties through their counsel are directed to appear in the transferee Court on 31.5.2019. Copies of orders be sent to the Court of District Judge, Family Court, Yamuna Nagar at Jagadhari as well as to the Family Court at Panipat for information and necessary compliance.

(H.S. MADAAN)
JUDGE

May 13, 2019
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No