

**Sr. No.208
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**TA No.343 of 2019 (O&M)
Date of Decision: 27.02.2020**

Sukhjinder Kaur

... Applicant

Versus

Jaspal Singh Shaheed @ Jaspal Singh

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Amit Kumar Walia, Advocate,
for the applicant.

None for the respondent.

ARUN MONGA, J.(ORAL)

1. Applicant-wife seeks transfer of petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955 bearing HMA No.544 of 2018 titled as "Jaspal Singh Shaheed Vs. Sukhjinder Kaur" pending in the Court of learned District Judge, Family Court, Karnal to the Court of competent jurisdiction at Bathinda.

2. Learned counsel for the applicant submits that the applicant-wife is aged about 65 years and is a senior citizen. The distance from Karnal to Bathinda is about 300 Kms. Applicant-wife is a resident of Canada also. She also used to visit Canada from time to time. She would also require to contest the proceedings by appointing any of her close relative from parental family members as her special attorney.

3. He further submits that one petition under Section 125

Cr.P.C. seeking grant of maintenance is already pending at Bathinda. It is difficult for her or to her attorney to go to Karnal on each date of hearing as she has no relative in Karnal.

4. None has put in appearance on behalf of the respondent. Even though office report reveals that the summons sent by this Court were tried to be served on the brother of the respondent-husband but he returned the same on the ostensible ground that his brother is residing in USA. Perusal of the divorce petition under Section 13 of Hindu Marriage Act, 1955 by the respondent-husband reflects to the contrary as the recital by the petitioner therein (respondent herein) clearly states that he is currently resident of village Gudha, P.O. Indri, Tehsil Indri District Karnal and yet at the time of service being effected the summons have been returned that he stays at USA. In the premise, this Court is of the view that respondent-husband is intentionally evading the service. Also to be noted, that summons of the present application were also served to learned counsel for the respondent-husband representing him in the Family Court at Karnal and yet he has chosen not to respond in the present proceedings. In the premise, it seems that he is not interested to contest the transfer application and has deemingly consented to the transfer of the matrimonial proceedings from Karnal to Bathinda.

5. I have heard learned counsel for the applicant and have gone through the record of the case.

6. Both the cases pending between the parties are aftermath of matrimonial discord. Keeping in view the contentions

in the application and the conceded position that petition under Section 125 Cr.P.C. is already pending at Bathinda, it would be proper, appropriate and in the interest of justice if both the cases are tried and decided at one place.

7. Reference may also be had to the observations made by Hon'ble the Supreme Court of India in cases titled as "***Sumita Singh Vs. Kumar Sanjay and another***", ***AIR 2002 SC 396*** and ***Rajni Kishor Pardeshi v. Kishor Babulal Pardeshi***" ***2005 (12) SCC 237***, wherein in matrimonial matters, convenience of wife is to be preferred over the convenience of husband.

8. Even otherwise, the ethos as manifested under Article 51-A of Constitution of India also envisage that it shall be fundamental duty of every citizen of India to uphold the dignity of woman. In addition, per Article 15 (3), power has also been conferred on the State to make special provisions for women and children.

9. It was perhaps in this spirit that an amendment was inserted by Act 50 of 2003 with effect from 23.12.2003 in Hindu Marriage Act, 1955, whereby, in case of a wife being the petitioner, jurisdiction was conferred to the Court within local limits of whose ordinary original civil jurisdiction, the wife is residing on the date of presentation of the petition. In fact the very statement of objects and reasons of the Bill whereby Clause (iiia) was inserted in Section 19 (i) of HMA, by way of marriage laws (Amendment Act 2003) states as below :

"The Special Marriage Act, 1954 and the Hindu

Marriage Act, 1955 provide that a petition for relief under the provisions of these Acts shall be presented to the District Court within the limits of whose original civil jurisdiction the marriage was solemnized or the respondent, at the time of the presentation of the petition, resided or the parties to the marriage last resided together or the petitioner was residing at the time of the presentation of the petition, in a case where the respondent was at the time residing outside the territories to which these Acts extended or had not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive. However, these provisions are not considered adequate or fair as far the women are concerned. Under the existing provisions, a petition cannot be filed by the aggrieved wife to the District Court within the local limits of whose ordinary jurisdiction she may be residing. In view thereof, the Government has decided to amend the provisions of these Acts so that the wife can also file petition in the District Court within local limits of whose jurisdiction she may be residing.

10. After the aforesaid amendment, husband can only institute proceedings, either where marriage was solemnized or where the wife is residing or where the parties last resided together. Only in a case where wife is residing outside India, the husband can institute proceedings where he is residing. Whereas, wife can file a petition on the additional ground of her being resident within the local limits of the competent Court. The said right has been exclusively conferred on a wife so as to keep her convenience in mind in the matrimonial matters.

11. In the premise, present application is allowed. The

petition in question pending before the Court of learned District Judge, Family Court, Karnal is ordered to be withdrawn from that Court and is transferred to the District Judge, Bathinda for its disposal in accordance with law by the Court concerned.

27.02.2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No