

**Sr. No.214
IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**TA No.720 of 2019 (O&M)
Date of Decision: 05.03.2020**

Kiran Devi

... Applicant

Versus

Rakesh

... Respondent

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. J.S.Dahiya, Advocate,
for the applicant.

Mr. R.K.Mahajan, Advocate,
for the respondent.

ARUN MONGA, J.(ORAL)

1. Applicant seeks transfer of petition filed by the respondent under Section 9 of the Hindu Marriage Act, 1955 bearing HMA case No. DMC/69/2019 titled as “Rakesh Vs. Kiran Devi” pending in the Court of learned Additional District Judge, Charkhi Dadri to the Court of competent jurisdiction at Karnal.

2. Learned counsel for the applicant submits that criminal proceedings arising out of FIR No.832 dated 18.11.2018 under Sections 323, 365, 342, 376, 506, 34 IPC against the respondent filed by the applicant are already pending at Karnal.

3. Learned counsel for the applicant further submits that applicant is residing at Village Furlak, Tehsil Gharaunda, District Karnal. The distance between Charkhi Dadri and Karnal is about 200 kms. Therefore, it is difficult for her to go to Charkhi Dadri on each date of hearing.

4. Learned counsel for the respondent appears and

opposes the transfer application saying that there was a love marriage between the parties. This fact has been controverted by learned counsel for the applicant saying that in fact there was no marriage between the parties. He submits that respondent forced her to marry and confined her in illegal custody. Thereafter, she disclosed the above said fact to her parents then FIR under Sections 323, 365, 342, 376, 506, 34 IPC was registered upon which he was arrested and later on he was released on bail. After framing of charge, the case is now fixed for prosecution evidence. The respondent has filed false and frivolous petition under Section 9 of the Hindu Marriage Act.

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

6. Keeping in view the contentions in the application and the conceded position that criminal proceedings arising out of FIR No.832 dated 18.11.2018 under Sections 323, 365, 342, 376, 506, 34 IPC are already pending at Karnal, 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 it is observed that 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 envisages 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) is 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 also file a petition in the District Court within the local limits of whose jurisdiction she herself may be residing. The said right has been exclusively conferred on a wife obviously keeping her convenience in mind in the matrimonial matters.

11. In the premise, without going into the controversy, whether or not there is marriage between the parties, the present application is allowed. The petition in question pending before the Court of learned Additional District Judge, Charkhi Dadri is ordered to be withdrawn from that Court and is transferred to the District Judge, Karnal for its disposal in accordance with law by the Court concerned.

05.03.2020

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No