

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

TA-125 of 2021 (O&M)

Date of Decision: 10.03.2021

Mamta Rani

...Applicant/petitioner

Vs.

Sandeep Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Kushagra Beniwal, Advocate,
For the applicant/petitioner.

Mr. Rishi Pal Singh, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Applicant-wife seeks transfer of petition under Section 13 of Hindu Marriage Act filed by the respondent-husband bearing HMA No. 45 of 2021 titled as "Sandeep Kumar Vs. Mamta Rani" pending in the Court of Learned Principal Judge, Family Court, Karnal, to the Court of competent jurisdiction at Kurukshetra.

2. Learned counsel for the applicant submits that complaint under Domestic Violence Act, divorce petition under Section 13 of HMA and petition under Section 125 Cr.P.C. for grant of maintenance and FIR No. 113 dated 26.11.2019 under Sections 316, 323, 377, 406, 498-A, 506 filed at the instance of the applicant/petitioner against the respondent-husband are already pending in the District and Sessions Court, Kurukshetra.

3. Learned counsel relies on Section 21-A of Hindu Marriage Act, 1955. He submits that perusal of Section 21(A)(2)(b), *ibid* would reveal that petition filed later shall be transferred to the Court where earlier petition is already pending and both the petitions will be heard and disposed of

together. He submits that divorce petition filed by the present petitioner at District Courts, Kurukshetra is prior to the filing of the divorce petition filed by the respondent. He further submits that one daughter born out of wedlock is in the custody of the applicant and she is residing with her, who needs constant care during the pandemic and cannot be left alone. Therefore, it is difficult for her to go to Karnal to attend court hearings.

4. Learned counsel for the respondent-husband joins the proceedings and opposes the transfer petition on the ground that distance between Kuruskshetra and Karnal is only 33 kms. and therefore applicant-petitioner can easily appear.

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

6. All the cases pending between the parties are aftermath of matrimonial discord. Keeping in view the contentions in the application and the conceded position that complaint under Domestic Violence Act, divorce petition, petition under Section 125 Cr.P.C. for grant of maintenance and FIR No.113 dated 26.11.2019 under Sections 316, 323, 377, 406, 498-A, 506 IPC are already pending at Kurukshetra, it would be proper, appropriate and in the interest of justice if all the cases are tried and decided at one place.

7. Reference may also be had to “*Sumita Singh Vs. Kumar Sanjay and another*”, *AIR 2002 SC 396* and *Rajni Kishor Pardeshi v. Kishor Babulal Pardeshi*” *2005 (12) SCC 237*, wherein Supreme Court has 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 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, without going into the allegations/counter allegations, the present transfer application is allowed. The petition in question pending before the Court of Learned Principal Judge, Family Court, Karnal, is ordered to be withdrawn from that Court and is transferred to the District Judge, Kurukshetra for its disposal in accordance with law by the Court concerned.

March 10, 2021
vandana

(ARUN MONGA)
JUDGE

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