

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

TA-602-2020 (O&M)

Date of Decision: 09.03.2021

Monika Panwar

...Applicant

Vs.

Vishav Shakti

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashwani Bhardwaj, Advocate,
for the applicant.

Mr. Pankaj Maini, Advocate,
For the respondent.

ARUN MONGA, J. (ORAL)

Applicant-wife seeks transfer of petition under Section 9 of Hindu Marriage Act filed by the respondent-husband bearing HMA No. 683 of 2019 titled as “Vishav Shakti Vs. Monika Panwar” pending in the Court of Learned Principal Judge, Family Court, Narnaul, to the Court of competent jurisdiction at District Gurugram.

2. Learned counsel for the applicant submits that a complaint at the instance of the applicant/petitioner against the respondent-husband is already pending before the crime against women Cell, Gurugram.

3. Learned counsel for the applicant submits that petitioner is currently residing in her parental home at Gurugram. The distance from Gurugram to Narnaul is about 130Kms. Petitioner has no source of income. She is dependent upon her parents. He further submits that there is no male member, who is able to accompany her. Therefore, it is difficult for her to go to Narnaul to attend court hearings.

4. Learned counsel for the respondent-husband appears and opposes the transfer petition on the ground that applicant-petitioner has sufficient means and can also appear through an advocate.

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

6. 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 is already pending before the crime against women cell, Gurugram, it would be proper, appropriate and in the interest of justice if the same 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 Family Court, Narnaul (Camp Court Mahendergarh), is ordered to be withdrawn from that Court and is transferred to the District Judge, Gurugram for its disposal in accordance with law by the Court concerned.

12. Pending application, if any, shall also stand disposed of.

March 09, 2021

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No