

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

**Transfer Application No. 1 of 2021 (O & M)
Date of decision: 16.12.2022**

Rekha Rani

.....Petitioner

Vs

Sushil Kumar

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Arshit Goel, Advocate as Legal Aid Counsel
for the petitioner.

Mr. Ketan Antil, Advocate
for the respondent.

NIDHI GUPTA, J.(Oral)

CM-16941-CII-2022

Prayer in this application is for placing on record the
short reply on behalf of respondent.

In view of the facts mentioned in the application, the
same is allowed and the short reply on behalf of respondent is taken
on record.

Main case

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955 (for short 'the Act') titled "Sushil Kumar vs. Rekha Rani" pending in the Court of Principal Judge, Family Court, Sonapat to a Court of competent jurisdiction at Karnal.

2. Learned counsel for the petitioner has contended :-

- i) That the parties were married on 25.2.2011 according to Hindu rites and rituals.
- ii) That two children were born out of this wedlock, who are minors and are in the care and custody of the respondent-husband.
- iii) That the petitioner-wife is living separately from the respondent-husband since 23.6.2020 and living with her parents at their mercy at Karnal.
- iv) That the petitioner is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband is not paying anything to her towards maintenance.
- v) The respondent-husband has filed the petition under Section 13 of the Hindu Marriage Act, which is pending before the Principal Judge, Family Court, Sonapat.

The proceedings arising out of petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Karnal.

- v) That the distance between place of residence of the petitioner-wife i.e. Karnal and the place of proceedings under Section 13 of the Hindu Marriage Act, 1955 filed by the respondent-husband, pending before the Principal

Judge, Family Court, Sonipat, is about 85 kilometers of one side.

- vi) That there is no proficient male member in the family of the petitioner, who can accompany her to the Court of proceedings at Sonipat. The mother of the petitioner is not alive and the old father of the petitioner is not in a position to earn anything.

3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

In response to the notice of motion, respondent has put in appearance through counsel and filed his short reply.

Learned counsel for the respondent very vehemently opposed the allegations leveled by the petitioner against the respondent in the present petition. He further submits that the petitioner has not come to the Court with clean hands and has suppressed true and material facts, as under :-

- a) That the petitioner has filed an FIR No.57 dated 27.6.2020, under Sections 323, 498-A, 406 and 506 IPC, registered at Women Police Station, District **Sonipat**, yet the same has been filed on false allegations but it is very much pending there.
- b) That the petitioner is also facing allegations in an FIR No.820 dated 17.12.2020, under Sections 323, 342 and 506 IPC, pending at District Sonipat, lodged by the respondent-husband. The said FIR was registered on an application filed by the respondent-husband under Section 156(3) Cr.P.C. with the allegations that the petitioner-wife

had committed the offence of hurt, attempt to murder and wrongful confinement of the complainant (respondent-husband herein) as well as the minor child of the complainant. The same is also pending at Sonipat.

- c) The petitioner-wife is in habit of misusing the process of law as she has solemnized second marriage with one person, namely, Rahul s/o Om Parkash without taking divorce from the present respondent. The Marriage Certificate of the second marriage of petitioner-wife is annexed as Annexure R-1 and the photographs of said marriage have been annexed as Annexure R-2. This fact has also been concealed by the petitioner-wife in her petition.
4. Learned counsel for the respondent-husband submits that despite the wrong doings of the petitioner-wife, the respondent-husband is handling the responsibilities qua his old aged and ailing parents, and minor son very well and the petitioner-wife despite solemnizing illegal second marriage, with an intention to torture the respondent-husband, minor children and family members of the respondent is adopting such tactics so that she may ruin the life of the respondent and future of the children.
5. I have heard learned counsel for the parties.
6. In view of the submissions made by learned counsel for the parties and perusing the record, I am of the view that the petitioner-wife is concealing the true and material facts from the Court as she did not disclose anywhere in her petition about the FIR

No.820 dated 17.12.2020, filed by the respondent-husband, as also FIR No.57 dated 27.6.2020 registered by the petitioner herself, proceedings qua which are pending at Sonipat. Secondly, despite pendency of the matrimonial dispute qua her first marriage, it is alleged that she has solemnized second marriage, as shown in Annexures R-1 and R-2. Moreover, it is not in doubt that the respondent is single-handedly looking after his minor son, who is in his care and custody and for whose welfare he is single-handedly responsible. The respondent is working to provide all amenities to the child and therefore the inconvenience caused to him will be more if he has to travel, in addition to all his responsibilities.

7. This Court is well aware of the preponderance of law in cases of transfer emanating from matrimonial disputes is in favour of the wife. However, in certain similar cases the Hon'ble Supreme Court, as well as this Court have refused relief to the wife. One such case which may be referred to is: **(2006) 9 SCC 197 'Anindita Das Vs. Srijit Das'** wherein Hon'ble Supreme Court under similar circumstances dismissed the wife's application seeking transfer of petition filed by the husband. Reference in this regard may also be made to two cases of this Court where, in similar circumstances this Court had dismissed transfer applications filed on behalf of the wife. These are: **TA no. 126 of 2018 Smt. Akhwinder Kaur Vs. Sh. Gurpreet Singh;** and **TA No. 299 of 2019 Nisha alias Manisha vs. Amarveer Yadav.**

8. Accordingly, I find no merits in the petition and the same is hereby dismissed.

Pending application(s), if any, stand disposed of.

December 16, 2022

Vijay Asija

(NIDHI GUPTA)

JUDGE

Whether speaking/reasoned

YES/NO

Whether Reportable

YES/NO