

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

TA No. 59/2021(O&M)

Date of decision: 10/11/2022

Manpreet Kaur

.....Petitioner

v

Rajesh Kumar

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Puja Chopra, Advocate for the petitioner.

Mr. Manpreet Arya, Advocate for the respondent.

Nidhi Gupta, J.(Oral)

1. Prayer in this petition filed by petitioner wife is for transfer of petition u/s 9 of the Hindu Marriage Act, filed by the respondent, bearing HMA/991/2020 titled Rajesh Kumar v Manpreet Kaur from the Court of Principal Judge, Family Court, Ludhiana to a court of competent jurisdiction at SBS Nagar.

2. Learned counsel for the petitioner inter alia submits:

i) that the marriage between the parties was solemnised on 26.2.2016. Out of this wedlock a girl child named Deepshikha was born in December 2016. Thereafter another daughter named Manraj Kaur was born in November 2019.

ii) that at the time of marriage sufficient dowry was given by the parents of the petitioner but soon after the marriage the respondent and his family members started torturing

and harassing the petitioner for dowry. After the birth of second girl child, respondent and his family members were further enraged that they have been burdened with two daughters and ultimately she was thrown out of her matrimonial home.

iii) that in June 2020 when parents of the petitioner went to the house of the respondent with a request to rehabilitate the petitioner, the petitioner alongwith her parents were turned out of the house and the elder daughter Deepshikha was snatched away from the petitioner.

iv) that when all efforts of rehabilitation of petitioner in her matrimonial home failed, petitioner moved an application to SSP SBS Nagar besides moving an application under Section 125 Cr.PC before the Courts at SBS Nagar in which respondent no.1 has been summoned.

v)that to harass the petitioner, as a counterblast, respondent no.1 filed petition u/s 9 of the HMA at Ludhiana.

vi) that since respondent and his family refused to handover the custody of minor Deepshikha, petitioner filed an application u/s 7 and 25 of the Guardian and Wards Act at Ludhiana, transfer of which has also been sought from Ludhiana to SBS Nagar by filing TA 769/2021.

vii) that the father of the petitioner is suffering from diabetes and hypertension as well as severe eye problem due to which he is unable to accompany petitioner to pursue her case at Ludhiana, which is at a considerable distance from SBS Nagar.

viii) that the petitioner has to take care of her second minor daughter aged 1-1/2 years who is living with her.

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

4. On the other hand learned counsel for the respondent opposed this Transfer Application and inter alia submits that respondent is willing to live with the petitioner.

5. I have heard learned counsel for the parties and gone through the record. Further this Court had referred the parties to Mediation, which has failed.

6. The legal position in such like cases as the present one, is well established. In this regard, judgment of the Hon'ble Supreme Court rendered in **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha," 2022 Live Law (SC) 627**, is most relevant wherein the Hon'ble Supreme Court has held as under:-

“9. The cardinal principle for exercise of power under section 24 of the Code of Civil Procedure is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In matrimonial matters, wherever Courts are called upon to consider the plea of transfer, the Courts have to take into consideration the economic soundness of both the parties, the social strata of the spouses and their behavioural pattern, their standard of life prior to the marriage and subsequent thereto and the circumstances of both the parties in eking out their livelihood and under whose protective umbrella they are seeking their sustenance to life. Given the prevailing socioeconomic paradigm in the Indian society, generally, it is the wife's convenience which must be looked at while considering transfer.

10. Further, when two or more proceedings are pending in different Courts between the same parties which raise common question of fact and law, and when the decisions in the cases are interdependent, it is desirable that they should be tried together by the same Judge so as to avoid multiplicity in trial of the same issues and conflict of decisions.”

7. Further reliance can be placed upon the judgments in **“Sumita Singh vs Kumar Sanjay”, 2002 SC 396** and **“Rajani Kishor Pardeshi vs Kishor Babulal Pardeshi”, 2005(12) SCC 237**, wherein the Hon'ble Supreme Court has observed that “while deciding the transfer application,

the Courts are required to give more weightage and consideration to the convenience of the female litigants and transfer of legal proceedings from one Court to another should ordinarily be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships.”

8. Even this Court in number of cases has followed the aforesaid principle of law. Accordingly, it is well settled that while considering the transfer of a matrimonial dispute/case, at the instance of the wife, the Court is to consider the family condition of the wife, the custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important the convenience of the wife i.e. she cannot travel alone without assistance of a male member of her family, connectivity of the place to and fro from her place of residence as well as bearing of the litigation charges and travelling expenses.

9. After hearing the learned counsel for the parties and in view of the judgments i.e. **Sumita Singh’s** case (supra), **Rajani Kishor Pardeshi’s** case (supra) and **N.C.V. Aishwarya’s** case (supra) passed by the Hon’ble Supreme Court, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

a) The petition filed by petitioner, detailed in para 1 above, is transferred from Ludhiana to a Court of competent jurisdiction at SBS Nagar.

b) The Id. District Judge, Ludhiana is directed to transfer complete record pertaining to the aforesaid case to District Judge, SBS Nagar.

c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, SBS Nagar on 12.12.2022.

d) The District Judge, SBS Nagar will assign the said petition to the Court of competent jurisdiction.

10. The concerned Court at SBS Nagar will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.

11. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

Disposed of.

10/11/2022
Joshi

(Nidhi Gupta)
Judge