

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

**TA-79-2021 (O&M)
Date of decision: 18.07.2022**

Santosh Rani

...Petitioner

Versus

Bhushan Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Avi Karan Bansal, Advocate for
Mr. Deepak Gupta, Advocate
for the petitioner.

None for the respondent, despite service.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled as ***Bhushan Kumar vs. Santosh Rani***, pending before the Family Court, Barnala to the competent Court of jurisdiction at Faridkot.

On 16.03.2021, while issuing notice of motion, the following order was passed”

“Counsel submits that marriage between the parties was solemnized in the year 1991. Two children were born out of the wedlock. Son is now aged about 25 years and daughter is aged 22 years. Both are unmarried. Petitioner has been staying separately from the respondent since the year 2014 and is currently residing at Jaitu, District Faridkot. An application seeking maintenance under Section 125 Cr.P.C. was filed by the petitioner at Faridkot. Now a divorce petition has been instituted by the husband at Barnala. It is argued that petitioner is 58 years old and is struggling to survive as also to support her children. Under such circumstances

convenience of the wife ought to prevail.

Notice of motion returnable for 17.05.2021.”

Learned counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner-wife has filed a petition under Section 125 Cr.P.C. for grant of maintenance at Faridkot and as a counter-blast to the same, the respondent-husband has filed the present petition under Section 13 of the Hindu Marriage Act at Barnala in order to harass the petitioner. It is further submitted that the petitioner is facing great difficulty in prosecuting the said case, as there is a distance of about 58 kms between Faridkot and Barnala.

Learned counsel has relied upon the judgments ***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 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.*”

As per office report, the respondent is not served through his counsel in the trial Court, however, there is no representation on his behalf.

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 family condition of the wife, custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important, 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.

After hearing the counsel for the petitioner, considering the fact that if the aforesaid petition is not transferred, the petitioner-wife will have to bear the litigation expenses and transportation expenses and also in view of the ratio of law laid down by Hon'ble Supreme Court in ***Sumita Singh***'s case (supra) and ***Rajani Kishor Pardeshi***'s case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

- (i) *The petition filed under Section 13 the Hindu Marriage Act, pending before the Family Court, Barnala will be transferred to the competent Court of jurisdiction at Faridkot.*
- (ii) *The District Judge, Faridkot will assign the said petition to the competent Court of jurisdiction.*
- (iii) *The Family Court at Barnala is directed to transfer all the record pertaining to the aforesaid case to District Judge, Faridkot.*
- (iv) *The parties are directed to appear before the trial Court at Faridkot within a period of 01 month from today.*

However, liberty is granted to the respondent-husband to revive this petition, if he intends to contest the same, provided that:-

- (i) *The respondent will clear all the arrears of maintenance amount, if any, in terms of the petition filed by the petitioner either under Section 125 C r.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.*
- (ii) *The respondent will file an affidavit giving*

undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Barnala, on each and every date of hearing.

(iii) The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Barnala, in case the respondent opts to contest this petition.

18.07.2022

Wasim Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No