

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA-119-2021 (O&M)
Date of decision: 30.08.2022

Rajwinder Kaur

....Petitioner

Vs.

Hapreet Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Mohinder Kumar, Advocate
for the petitioner.

Mr. Ranbir Singh Rawat, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of petition/GW No.39 of 2018 filed by the respondent-husband under Sections 7, 8, 10 & 12 of the Guardian and Wards Act, pending before the Additional Civil Judge (Sr. Divn.), SAS Nagar (Mohali) to the competent Court of jurisdiction at Amritsar.

Learned counsel for the petitioner, at the very outset, has relied upon the order dated 23.05.2019 passed by the Coordinate Bench in TA-107-2019, vide which divorce petition filed by the respondent-husband was transferred from the Court of Additional District Judge, SAS Nagar

(Mohali) to the competent Court of jurisdiction at Amritsar. It is further submitted that on account of matrimonial discord, the petitioner has filed a petition under Section 125 Cr.P.C. and a complaint under Section 12 of the Protection of Women from Domestic Violence Act at Amritsar. It is further submitted that the petitioner is facing great difficulty in prosecuting the petition filed by the respondent, as there is a distance of about 220 kms from Amritsar to SAS Nagar (Mohali).

Learned counsel has further contended that the minor child is living in care and custody of the petitioner and is staying at Amritsar, therefore, in terms of Section 9 of the Guardian and Wards Act, the jurisdiction otherwise be at a place, where the child is residing i.e. Amritsar.

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.*”

Learned counsel has further relied upon **N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha, 2022 Live Law (SC) 627**, wherein the Hon'ble Supreme Court held as under: -

“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.

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.”

Reply on behalf of the respondent, filed in the Court today, is taken on record, in which it is stated that the respondent-husband stands acquitted in the FIR got registered by the petitioner-wife and the complaint under the Protection of Women from Domestic Violence Act is also dismissed by the Court.

Learned counsel for the respondent has referred to medical certificate of the respondent-husband, which reflects that he is suffering from alcoholic liver disease and prayed for dismissal of the present petition.

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 parties, considering the fact that the petitioner-wife will have to bear the litigation expenses and transportation expenses and in view of the judgments in **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 deem it appropriate to allow the present petition, subject to the following conditions:-

- 1. The petition/GW No.39 of 2018 filed by the respondent-husband under Sections 7, 8, 10 & 12 of the Guardian and Wards Act, pending before the Additional Civil Judge (Sr. Divn.), SAS Nagar (Mohali) will be transferred to the competent Court of jurisdiction at Amritsar.*
- 2. The District Judge, Amritsar will assign the said petition to the competent Court of jurisdiction.*
- 3. The Family Court, SAS Nagar (Mohali) is directed to transfer all the record pertaining to the aforesaid case to District Judge, Amritsar.*
- 4. The parties are directed to appear before the District Judge,*

Amritsar within a period of 01 month from today.

5. *The trial Court at Amritsar will make all the endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of amicable settlement between the parties.*
6. *The Court concerned, where the litigations between the parties are pending, will accommodate them with one date in one calender month.*

Present petition is disposed of accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

30.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No