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

CRM-M-7769-2021

Date of Decision: November 18, 2022

Prem Singh Mann and others

.....Petitioners

Versus

Harjot Kaur

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Vaibhav Narang and
Mr.Devansh Khanna, Advocates
for the petitioners.

Ms.Ritu Pathak, Advocate
for the respondent.

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RAJESH BHARDWAJ, J.(ORAL)

Petitioners have filed this petition under Section 407 Cr.P.C. praying for transfer of the case titled as 'Harjot Kaur vs Jaspreet Singh Mann' case No.COMA/69/2020, dated 14.12.2020, filed under Sections 12, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005 from the Court of learned Judicial Magistrate Ist Class-1, Fatehgarh Sahib to a Court of competent jurisdiction at District Amritsar.

It has been contended by counsel for the petitioners that petitioners No.1 and 2 are the parents-in-law, whereas petitioner No.3 is the husband of the respondent. He submits that petitioner No.3 solemnized the marriage with the respondent on 03.04.2020 as per Sikh Rites and Ceremonies. Thereafter, it is submitted that the respondent asked her husband to apply for Canada but her husband told her that huge amount of money is required for applying for Canada and then he raised illegal demand

of dowry to the tune of Rs.30.00 lakhs. It was further alleged that family

members pressurized her to bring Rs.30.00 lakhs and for this demand, all used to harass her and thus, on the basis of such allegations the complaint has been lodged by the respondent against the petitioners. He submits that petitioners No.1 and 2 are the old aged persons and it is very difficult for them to travel from Amritsar to Fatehgarh Sahib. He also submits that other litigation between the parties are pending at Amritsar, i.e. one divorce petition filed by the husband and another civil suit filed by petitioner No.2 against the respondent. He also submits that the respondent has also filed a police complaint in District Mohali before DSP (NRI & Women). He submits that petitioners No.1 and 2 are senior citizens and it is difficult for them to travel all the way from Amritsar to Fatehgarh Sahib. He submits that the respondent has filed a complaint in order to harass the petitioners although they have no role whatsoever in the matrimonial life of the respondent. He further submits that the respondent belongs to an influential family and time and again they threaten the petitioners and hence, there is a threat to their life and liberty at Fatehgarh Sahib. He submits that the provisions of Section 407 Cr.P.C. are there to meet the ends of justice and hence the facts and circumstances of the case fulfill all the ingredients for invoking the power by this Court under Section 407 Cr.P.C. and transfer the trial of the complaint case No.COMA/69/2020 dated 14.12.2020 from the Court of Judicial Magistrate Fatehgarh Sahib to the Court of competent jurisdiction at District Amritsar.

On the other hand, counsel for the respondent has vehemently opposed the submissions made by counsel for the petitioners. She has submitted that since the day of marriage, the petitioners have caused mental and physical harassment to the respondent/wife and made her life miserable.

She submits that it was an arranged marriage. Petitioners No.1 and 2 are the parents-in-law whereas petitioner No.3 is the husband of respondent. She submits that after the marriage, petitioner No.3 stayed with the respondent upto October 2020 and thereafter he shifted to Canada. He submits that the respondent has been deserted by her husband, i.e. petitioner No.3, since October 2020 and he never returned to India. She submits that the respondent has no other option than to live with her parents at Fatehgarh Sahib. She has submitted that neither petitioner No.3 has bothered to take care of respondent nor petitioners No.1 and 2, who being the parents-in-law have owed responsibility towards the respondent. She submits that not only this, petitioner No.2, i.e. mother-in-law, has filed a suit for permanent injunction for restraining the respondent from entering her matrimonial home. She submits that petitioner No.3 has also filed a petition under Section 13 of the Hindu Marriage Act for seeking divorce from the respondent at Amritsar, however, as the respondent is living in Fatehgarh Sahib with her parents, the trial of the same has already been transferred from the Court of Amritsar to the Court of competent jurisdiction at Fatehgarh Sahib. She submits that the petitioners have not paid even a penny so far towards the maintenance of the respondent and hence, the respondent is in serious financial crisis. She submits that in the facts and circumstances, the proceedings are more convenient for the respondent to be carried out at Fatehgarh Sahib, where she is living. It is submitted that in view of the facts and circumstances, the present petition deserves to be dismissed. She further submits that as per settled law, it is the convenience of the wife which is to be seen while transferring a petition under Section

Heard.

Relationship of the petitioners with the respondent is not in dispute. Marriage of petitioner No.3 took place with respondent on 03.04.2020. Thereafter both of them remained together upto October 2020. However, thereafter the husband, i.e. petitioner No.3 shifted to Canada and is living there since then. Respondent/wife is living with her parents at Fatehgarh Sahib as submitted before this Court. No maintenance is being paid by the petitioners to the respondent. Petitioner No.3/husband has already filed a petition under Section 13 of the Hindu Marriage Act seeking divorce from the respondent. Though this petition was filed before the Court of competent jurisdiction at Amritsar, however, subsequently, on the prayer of the respondent/wife, the trial of the same was transferred to the Court of competent jurisdiction at Fatehgarh Sahib. For decision of the case, the appreciation of Section 407 Cr.P.C. is the relevant, which reads as under:-

“Section 407. Power of High Court to transfer cases and appeals:-

- (1) Whenever it is made to appear to the High Court—
 - (a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or
 - (b) that some question of law of unusual difficulty is likely to arise; or
 - (c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-
 - (i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;
 - (ii) that any particular case, or appeal, or class of cases or appeals, be transferred from a criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;
 - (iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself. ”

(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative;

Provided that no application shall lie to the High Court for transferring a case from one criminal Court to another criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

(3) Every application for an order under Sub-Section(1) shall be made by motion, which shall, except when the applicant is the Advocate-General of the State, be supported by affidavit or affirmation.

(4) When such application is made by an accused person, the High Court may direct him to execute a bond, with or without sureties, for the payment of any compensation which the High Court may award under Sub-Section(7).

(5) Every accused person making such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least-twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(6) Where the application is for the transfer of a case of appeal from any subordinate Court, the High Court may, if it is satisfied that it is necessary so to do in the interests of justice, order that, pending the disposal of the application, the proceedings in the subordinate Court shall be stayed, on such terms as the High Court may think fit to impose.

Provided that such stay shall not affect the subordinate Court's power of remand under Section 309.

(7) Where an application for an order under Sub-Section (1) is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider proper in the circumstances of the case.

(8) When the High Court orders under Sub-Section (1) that a case be transferred from any Court for trial before itself, it shall observe in such trial the same procedure which that Court would have observed if the case had not been so transferred.

(9) Nothing in this section shall be deemed to affect any order of Government under Section 197.”

Hon'ble the Supreme Court in the case of N.C.V.Aishwarya vs

A.S.Saravana Karthik Sha 2022 AIR (Supreme Court) 4318 has held that

it is the wife's convenience which must be looked at while considering

transfer. Relevant para of the same reads as under:-

“9.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.”

From the facts and circumstances of the case, it is apparent that the respondent/wife is living with her parents at Fatehgarh Sahib. Already proceedings under Section 13 of the Hindu Marriage Act are transferred to the Court of competent jurisdiction at Fatehgarh Sahib. Needless to say, the convenience of the wife is to get the precedence as per the law settled and hence trial of the case pending at Fatehgarh Sahib is more convenient for the wife where petition under Section 13 of the Hindu Marriage Act is also pending. Thus, this Court finds that the petitioners do not fulfil the requisite ingredients for invoking the powers under Section 407 Cr.P.C. by the Court and hence the petition being devoid of any merit is hereby dismissed.

November 18, 2022
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(**RAJESH BHARDWAJ**)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |