

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

TA No.145/2022(O&M)

Date of decision: . 05.12.2022

Madhu Garg

.....Petitioner

Vs.

Sushil Garg

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.JS Johal, Advocate for the petitioner
Mr.Rajnikant Upadhyay, Advocate for the respondent.

Nidhi Gupta,J.

Petitioner wife has filed this Transfer Application seeking transfer of petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act,1955 titled “Sushil Garg v Madhu Garg” bearing No. HMA/212/2021 from the Court of Additional Principal Judge, Family Court, Yamuna Nagar to a court of competent jurisdiction at Mohali.

Learned counsel for the petitioner submits that the marriage between the parties was solemnized on 19.9.1999 and out of their wedlock three children i.e. two daughters and one son namely Divya, Sakshi and Krish were born, who are under forcible custody of the respondent. It is further alleged that

respondent husband has illegally kept with him the dowry articles given to her at the time of marriage and that the respondent and his family members proved to be very greedy person as they started harassing, humiliating, maltreating and beating the petitioner for dowry. It is further alleged that respondent husband is dealing in the shuttering work and as such associated with private builders and contractors and his monthly income is more than Rs. Two lakhs, besides being owner of godown and other land. It is further alleged that respondent is having illicit relationship with one lady namely Sushma whose son is assisting the respondent in his business and that respondent spends a huge chunk of his income on the maintenance and household expenses of said Sushma. It is further case of the petitioner that she was turned out of the matrimonial home in July 2020 and since then she is residing with her brother in Mohali. The daughters and son of the parties are residing with respondent at Yamuna Nagar as petitioner does not have any source of income to maintain them. It is then alleged that in order to cover his misdeeds respondent filed a petition u/s 13 of the HMA at Yamuna Nagar. It is averred that petitioner has filed (i) a petition under Section 125 Cr.PC., for grant of maintenance, and (ii) a complaint under the Domestic Violence Act in the Courts at Mohali, and respondent is appearing in the said cases at Mohali. It is averred that parents of the petitioner are no more and that she is living with her brother at District Mohali, having no source of income. It is further averred that the distance between Mohali and Yamuna Nagar is 110 kilometers and her brother is unable to accompany her on each and every date. It is further averred that now petitioner is depressed and not keeping good health, due to which she is unable to attend the proceedings in case u/s 13 HMA at Yamuna Nagar. With these averments prayer has been made to transfer the said petition u/s 13 HMA from Yamuna Nagar to Mohali; as also to exempt personal

appearance of the petitioner in a petition u/s 9 of the HMA pending in the Court of Addl. Principal Judge, Family Court, Yamuna Nagar.

In response, learned counsel for the respondent while opposing the prayer made in the petition has referred to report dated 15.4.2021 (R-1) submitted by DSP (Local)SAS Nagar to SSP Mohali and the accompanying statements dated nil made by respondent Sushil Kumar Garg and Ms.Divya Garg, 21 year old daughter of the parties, as Annexures R-2 and R-3 respectively. It has been submitted that the allegations made by the petitioner are totally false; she has left her matrimonial home of her own and now when the husband filed a petition u/s 13 of the HMA, as counter-blast petitioner has filed complaint under DV Act as well as petition under Section 125 Cr.PC at Mohali. Since no substance was found in the complaint made by the petitioner to the police regarding alleged demand of dowry and maltreatment, no action has been taken by the police on the said complaint. It has further been prayed that the petition be dismissed keeping in view the welfare of the children who are residing with their father-respondent at Yamuna Nagar.

Heard learned counsel for the parties and perused the paper book.

A perusal of Annexure R-1/ report dated 15.4.2021 made by the DSP (Local)SAS Nagar reveals that while concluding investigation into the complaint made by the petitioner levelling allegations of alleged demand of dowry, it was found that petitioner used to doubt her husband and did not cook food for the children. The petitioner and respondent were not on talking terms for the last five years. Around 1-1/2 years back when the respondent along with children had gone to Mata Vaishno Devi, the petitioner without informing the respondent and children left her matrimonial home to stay at her parental home and since then she is living there. It has further been found that despite repeated

requests by respondent and children, the petitioner did not join them back. The factum of respondent filing divorce petition at Yamuna Nagar also finds mention in the said report. Since no evidence was found against the respondent qua demand of dowry and maltreatment, no action was recommended in the complaint made by the petitioner.

Further, Ms .Divya Garg, aged 21 years, the eldest daughter of the parties herein, in her statement Annexure R-3 before the DSP(Local)SAS Nagar stated that she has one sister Sakshi aged 18 years and one brother namely Krish aged 15 years. Since beginning her mother used to fight with their father and did not even used to give food to the respondent. She even used to misbehave with the children in front of their friends by asking them to cook food themselves. It was further stated by her that about 1-1/2 years back when all of them (i.e. father and children) had gone to Mata Vaishno Devi, their mother left the house and went to her parental home without informing anyone. Number of requests made by children to the mother to come back did not yield any result.

From the facts, as noticed above, it is apparent that the respondent husband, besides looking after his shuttering business is burdened with the responsibility of upbringing three children; out of whom two are girls aged 18 and 21 years while the son is 15 years of age. The age of the children is very crucial inasmuch as their studies and career is concerned. From the above facts it is also evident that the petitioner has left her matrimonial home of her own accord and is residing with her brother, and away from the children. It is trite to suggest that it is only in cases of grave incorrigibility that a daughter would be constrained to make a statement against the mother, as evident from Annexure R-3 in the present case.

No doubt, 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: **Transfer Petition (Civil) No. 191 of 2005 '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.

Moreover, in the present case the singular concern that weighs with this Court is the interest and welfare of the children, which is paramount. Accordingly, in my view, from the above facts it is clear that in case the petition u/s 13 of the HMA is transferred from Yamuna Nagar to Mohali, as prayed for, it would cause unnecessary harassment and inconvenience not only to the respondent-husband but also to the children who are residing with him at Yamuna Nagar and pursuing their studies, being at a crucial juncture of their lives and careers. Keeping in view the interest of the young adults/ children of the parties, no case for transferring the petition u/s 13 of the HMA from Yamuna Nagar to Mohali is made out.

Dismissed.

(Nidhi Gupta)
Judge

05.12.2022

Joshi

Whether speaking/reasoned

Yes

Whether reportable

Yes/No