

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

**TA No.428 of 2022 (O&M)
Date of decision: 04.08.2022**

Yogita

....Petitioner

Versus

Sanjeev Ajmani

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Anshul Gupta, Advocate
for the petitioner.

Mr. C.S. Singhal, Advocate
for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for transfer of the petition filed under Section 25 of the Guardians and Wards Act, pending in the Family Court, Ambala to the competent Court of jurisdiction at Ludhiana.

Counsel for the petitioner has relied upon the order dated 18.02.2020 passed in TA No.124 of 2020, vide which the complaint filed by the respondent/husband under Section 9 of the Hindu Marriage Act stands transferred from Ambala to Ludhiana. The operative part of the said order, reads as under:-

“5. All the cases pending between the parties are aftermath of matrimonial discord. Keeping in view the contentions in the application and the conceded position that complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and petition under Section 125 Cr.P.C. for grant of maintenance are already pending at Ludhiana, it would be proper, appropriate and in the interest of justice, if all the cases are tried and decided at one place.

6. Reference may also be had to the observations made by Hon'ble the Supreme Court of India in cases titled as “Sumita Singh Vs. Kumar Sanjay and another”, AIR 2002 SC 396 and Rajni Kishor Pardeshi v. Kishor Babulal Pardeshi” 2005 (12) SCC 237, wherein in matrimonial matters, convenience of wife is to be preferred over the convenience of husband.

7. Even otherwise, the ethos as manifested under Article 51-A of Constitution of India also envisage that it shall be fundamental duty of every citizen of India to uphold the dignity of woman. In addition, per Article 15 (3), power has also been conferred on the State to make special provisions for women and children.

8. It was perhaps in this spirit that an amendment was inserted by Act 50 of 2003 with effect from 23.12.2003 in Hindu Marriage Act, 1955, whereby, in case of a wife being the petitioner, jurisdiction was conferred to the Court within local limits of whose ordinary original civil jurisdiction, the wife is residing on the date of presentation of the petition. In fact the very statement of objects and reasons of the Bill whereby Clause (iiia) was inserted in Section 19 (i) of HMA, by way of marriage laws (Amendment Act 2003) states as below :

“The Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 provide that a petition for relief under the provisions of these Acts shall be presented to the District Court within the limits of whose original civil jurisdiction the marriage was solemnized or the respondent, at the time of the presentation of the petition, resided or the parties to the marriage last resided together or the petitioner was residing at the time of the presentation of the petition, in a case where the respondent was at the time residing outside the territories to which these Acts extended or had not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he were alive. However, these provisions are not considered adequate or fair as far the women are concerned. Under the existing provisions, a petition cannot be filed by the aggrieved wife to the District Court within the local limits of whose ordinary jurisdiction she may be residing. In view thereof, the Government has decided to amend the provisions of these Acts so that the wife can also file petition in the District Court within local limits of whose jurisdiction she may be

residing.”

9. After the aforesaid amendment, husband can only institute proceedings, either where marriage was solemnized or where the wife is residing or where the parties last resided together. Only in a case where wife is residing outside India, the husband can institute proceedings where he is residing. Whereas, wife can file a petition on the additional ground of her being resident within the local limits of the competent Court. The said right has been exclusively conferred on a wife so as to keep her convenience in mind in the matrimonial matters.”

Counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner has filed a petition under Section 125 Cr.P.C. and also got registered an FIR No.116 dated 23.09.2019 at Ludhiana.

Counsel for the petitioner has further submitted that the respondent/husband has now filed a petition under Section 25 of the Guardians and Wards Act, as a counter-blast, before the Principal Judge, Family Court, Ambala.

Counsel for the petitioner has also argued that on account of a petition filed by the respondent/husband, the petitioner is facing great difficulty in prosecuting the said case as there is a distance of about 110 Kms from Ludhiana to Ambala.

Counsel for the petitioner has further contended that the petitioner is having a minor child, who is/are living in her care and custody and she is facing difficulty to defend the case as she has to travel from Ludhiana to Ambala.

Counsel for the petitioner 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 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.*”

Counsel for the petitioner has also relied upon the judgment ***“N.C.V. Aishwarya vs A.S. Saravana Karthik Sha,”*** 2022 Live Law (SC) 627, wherein the Hon’ble Supreme Court has observed 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.”

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.

Counsel for the respondent has, however, not disputed the factual position but opposed the submissions made by counsel for the petitioner.

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 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 deem it appropriate to allow the present petition, subject to the following conditions:-

- 1. The petition filed under Section 25 of the Guardians and Wards Act, pending before the Family Court, Ambala will be transferred to the competent Court of jurisdiction at Ludhiana.*
- 2. The District Judge, Ludhiana, will assign the said petition to the competent Court of jurisdiction.*

- 3. *The Family Court, Ambala is directed to transfer all the record pertaining to the aforesaid case to District Judge, Ludhiana.*
- 4. *The parties are directed to appear before the trial Court, Ludhiana, within a period of 01 month from today.*

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

04.08.2022

yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No