

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

TA No.461 of 2022 (O&M)
Date of decision: 15.07.2022

Megha Khattar

....Petitioner

Versus

Kapil Dev

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.K. Verma, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for transfer of the petition filed under Section 13 of the Hindu Marriage Act, pending in the Family Court, Fatehabad (Camp at Tohana) to the competent Court of jurisdiction at Sirsa.

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 a petition under Section 9 of the Hindu Marriage Act and also got registered an FIR under Sections 323, 354, 377, 406, 498-A, 506, 34 IPC at Sirsa.

Counsel for the petitioner has further submitted that the respondent/husband has filed the petition under Section 13 of the Hindu Marriage Act, as a counter-blast, before the Principal Judge, Family Court, Fatehabad (Camp at Tohana).

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 100 Kms from Sirsa to Fatehabad (Camp at Tohana).

Counsel for the petitioner has further contended that the petitioner is having a minor child, who is living in her care and custody and she is facing difficulty to defend the case as she has to travel from Sirsa to Fatehabad (Camp at Tohana).

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.”*

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.

After hearing the counsel for the petitioner, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise 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)*** and ***Rajani Kishor Pardeshi'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 13 of the Hindu Marriage Act, pending before the Family Court, Fatehabad (Camp at Tohana) will be transferred to the competent Court of jurisdiction at Sirsa.*
- 2. The District Judge, Sirsa, will assign the said petition to the competent Court of jurisdiction.*
- 3. The Family Court, Fatehabad (Camp at Tohana) is directed to transfer all the record pertaining to the aforesaid case to District Judge, Sirsa.*
- 4. The parties are directed to appear before the trial Court, Sirsa, within a period of 01 month from today.*

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

- (a) The respondent will clear all arrears of maintenance amount, if any, in terms of a petition filed by the petitioner either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.*
- (b) The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Fatehabad (Camp at Tohana), on each and every date of hearing.*
- (c) The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Fatehabad (Camp at Tohana) in case the respondent opt to contest this petition.*

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

15.07.2022

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Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No