

TA-455-2021
TA-354-2020

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 02.09.2022

1. TA-455-2021 (O&M)

Arti Thakur @ Arti Devi

....Petitioner

Vs.

Repti Raman Singh

....Respondent

2. TA-354-2020 (O&M)

Repti Raman Singh

....Petitioner

Vs.

Arti Devi @ Arti Thakur

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Karan Singla, Advocate for
Mr. P.K. Bansal, Advocate
for the petitioner (in TA-455-2021) and
for the respondent (in TA-354-2020).

Mr. Munish Puri, Advocate
for the petitioner (in TA-354-2020) and
for the respondent (in TA-455-2021).

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in TA-455-2021, filed by petitioner Arti Thakur @ Arti Devi, is for transfer of the petition filed by the respondent-husband under Section 9 of the Hindu Marriage Act (for short 'HM Act'), pending before the Family Court, Pathankot to the competent Court of jurisdiction at Ferozepur.

Prayer in TA-354-2020, filed by petitioner Repti Raman Singh, is for transfer of the petition filed by the respondent-wife under Section 13 of HM Act, pending before the Family Court, Ferozepur to the competent Court of jurisdiction at Pathankot.

Learned counsel for petitioner Arti Thakur @ Arti Devi has argued that since the petition under Section 9 of HM Act filed by husband Repti Raman Singh and petition under Section 13 of HM Act filed by wife Arti Thakur @ Arti Devi deserve to be decided by one Court, so as to pass an effective order, the petition under Section 9 of HM Act filed by husband Repti Raman Singh be transferred from Pathankot to Ferozepur, as petitioner Arti Thakur @ Arti Devi is facing great difficulty in prosecuting the petition filed by the respondent, as there is a distance of about 230 kms from Ferozepur to Pathankot. Learned counsel has referred to the order dated 15.05.2020 passed by the Coordinate Bench of this Court in CRWP-2313-2020, wherein one Surinder Singh filed a habeas corpus petition for releasing petitioner Arti Thakur from the illegal detention of respondent No.6 i.e. respondent Repti Raman Singh. The following order was passed, while disposing of the said petition: -

“Prayer is for the release of detenue Aarti Thakur from illegal detention of respondent No.6.

On 18.04.2020, following order was passed by the Coordinate Bench:-

“The case has been taken up for hearing through video conferencing.

It appears that on account of lockout due to COVID-19, the alleged detenue Arti Thakur could not be produced in the Court in terms of directions issued vide last order. It seems that it is so on account of the prevailing circumstances in the region, rather in the entire country.

Learned State counsel submits that the petitioner is not related to the alleged detenue and lacks locus standi to file the present petition. Furthermore, Arti Thakur is not being illegally detained in Nari Niketan, Jalandhar and as per information gathered by the Investigating Officer Arti Thakur, a major had been sent to Nari Niketan by the Court as per her own wishes, though, now she wants to leave that institute. Under the present scenario when there is an increase in number of cases infected by deadly Corona Virus and as per Government Instructions, the people have been asked to

remain at the places where they are and to avoid moving about, I find it proper and appropriate if she remains in Nari Niketan for the time being, though, suitable orders can be passed later on, in the light of facts and circumstances of the case and situation prevailing at that time.

In the meanwhile, learned State counsel may explore the possibility of knowing the wishes of the alleged detainee by this Court way of video conferencing.

Be listed on 15.05.2020.

Service of private respondents be procured in terms of the last order.”

Learned State counsel states that Aarti Thakur, the alleged detainee, is an accused along with one Pushpender Singh in an FIR under Section 380 IPC lodged by Sushma Devi, sister of Raman Singh respondent No.10, who is husband of Aarti Thakur. There is a matrimonial discord between Aarti Thakur and Raman Singh for which a divorce petition is statedly pending in the Court at Ferozpur.

Learned State counsel has already received instructions from Surender Kumar, ASI, Police Station Sujanpur, District Pathankot that Aarti Thakur does not wish to remain in Nari Niketan any more. She has desired to go from Nari Niketan as

per her own wish.

Mr. Munish Puri, Advocate on behalf of respondents No.10 to 13 has vehemently argued that respondent No.10 be given an opportunity to interact with Aarti Thakur so as to save his matrimonial house. The present petition is a habeas corpus petition and the scope of habeas corpus cannot be enlarged to meet any other contingencies for which parties would be having their legal remedies before the competent Court in accordance with law. Since, Aarti Thakur is major and she has shown her desire to leave Nari Niketan, Jalandhar, therefore, she would be well within her right to go as per her own wish.

This petition is disposed of accordingly. This order shall have no effect on the pending criminal case against alleged detainee. Let the detainee be set free forthwith.”

A perusal of the aforesaid order would clearly reveal that petitioner-wife Arti Thakur @ Arti Devi, who is above 18 years of age and without there being any order of the competent Court of law, was sent to Nari Niketan Jalandhar and when this Court intervened and directed the State counsel to know the wish of the detainee through video conferencing, it came to notice that she has been illegally detained against her wishes and ultimately, she was released from Nari Niketan, Jalandhar.

Learned counsel has further submitted that petitioner Arti

Thakur @ Arti Devi has constant threat at Pathankot, as on an earlier occasion, at the instance of one Sushma Devi, who is real sister of Repti Raman Singh, petitioner Arti Thakur @ Arti Devi was involved in FIR No.6 dated 13.01.2020 under Section 380 IPC, registered at Police Station Sujampur, District Pathankot, with the allegations that she has committed the theft of some gold articles. It is also submitted that petitioner Arti Thakur @ Arti Devi was arrested and was granted bail and only thereafter, she was sent to Nari Niketan, Jalandhar, when she was released in terms of the order dated 15.05.2020 passed in CRWP-2313-2020. It is thus submitted that the petition filed by husband Repti Raman Singh under Section 9 of HM Act may be transferred from Pathankot to Ferozepur, where the petition under Section 13 of HM Act filed by petitioner Arti Thakur @ Arti Devi is already pending.

In support of his arguments, 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.”

Learned counsel for respondent-husband Repti Raman Singh

has, however, opposed the prayer for transfer of petition under Section 9 of HM Act.

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, in TA-455-2021, 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 and also after going through the order dated 15.05.2020 passed in CRWP-2313-2020, it is apparent that the life and liberty of petitioner Arti Thakur @ Arti Devi is at stake at Pathankot, as on an earlier occasion, she was involved in aforesaid FIR No.6, at the instance of real sister of Repti Raman Singh and thereafter, she was forcibly sent to Nari Niketan, Jalandhar, without there being any order of any competent Court of law and ultimately, she was released under the orders of this Court, therefore, in all respects, this Court is convinced that petition filed by respondent Repti Raman Singh under

Section 9 of HM Act is liable to be transferred from Family Court, Pathankot to the competent Court of jurisdiction at Ferozepur, the petition filed by petitioner-wife Arti Thakur @ Arti Devi i.e. TA-455-2021 deserves to be allowed.

Looking into facts and circumstances of the case, this Court deem it appropriate to exercise its suo motu powers even to transfer the trial arising out of FIR No.6, which is pending before the Court at Pathankot, to some other competent Court of jurisdiction at Ferozepur.

Accordingly, TA-455-2021 filed by Arti Thakur @ Arti Devi is allowed, subject to the following conditions:-

- 1. The petition filed under Section 9 of the Hindu Marriage Act, pending before the Family Court, Pathankot will be transferred to the competent Court of jurisdiction at Ferozepur.*
- 2. The District Judge, Pathankot is directed to transfer all the record pertaining to the petition under Section 9 of the HM Act as well as aforesaid FIR No.6, to District Judge, Ferozepur.*
- 3. The District Judge, Ferozepur will assign both the cases petition to the competent Court of jurisdiction*
- 4. The parties are directed to appear before the District Judge, Ferozepur within a period of 01 month from today.*
- 5. The Family Court, Ferozepur 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.*

In view of the above, TA-354-2020, filed by petitioner-husband Repti Raman Singh praying for transfer of petition under Section 13 of HM Act, filed by petitioner-wife, is dismissed.

A photocopy of this order be placed on file of connected case.

[ARVIND SINGH SANGWAN]
JUDGE

02.09.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No