

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

219+366

1. TA-366-2020 (O&M)

Kuldeep Kaur

...Petitioner

Versus

Amrik Singh

...Respondent

2. TA-267-2021 (O&M)

Amrik Singh

...Petitioner

Versus

Kuldeep Kaur

...Respondent

Date of decision: 03.08.2022

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Amandeep Singh Manaise, Advocate
for the petitioner in TA-366-2020;
for the respondent in TA-267-2021.

Mr. Madan Lal Saini, Advocate
for the respondent in TA-366-2020;
for the petitioner in TA-267-2021.

ARVIND SINGH SANGWAN, J. (Oral)

This common order shall dispose of above mentioned two transfer applications as they are similar in nature.

Prayer in the first petition, filed by the wife, is for transfer of the petition filed by the respondent-husband under Section 9 of the Hindu Marriage Act, 1955 (*for short 'HMA'*), titled as ***Amrik Singh vs. Kuldeep Kaur***, pending before the Additional District Judge, Rupnagar to the

competent Court of jurisdiction at Batala, Gurdaspur, whereas prayer in the second petition, filed by the husband, is for transfer of the petition filed by the wife under Section 13 of the HMA, titled as ***Kuldeep Kaur vs. Amrik Singh***, pending before the Family Court, Gurdaspur, Camp Court Batala to the competent Court of jurisdiction at Rupnagar.

Learned counsel for the petitioner-wife submits that on account of a matrimonial discord, the petitioner-wife has filed a petition under Section 13 of the HMA at Batala, which is pending and as a counter-blast to the same, the respondent-husband has filed a petition under Section 9 of the HMA at Rupnagar in order to harass the petitioner. It is further submitted that the petitioner-wife is facing great difficulty in prosecuting the said case, as there is a distance of about 200 Kms between the aforesaid two places.

Learned counsel for the petitioner further submits that the petitioner is having a minor child, who is living in her care and custody, therefore, it is very difficult for her to defend the said case at Rupnagar.

Learned counsel for the petitioner-wife further submits that even otherwise, once a petition under Section 13 of the HMA is filed praying for decree of divorce, the grounds taken in the petition filed by the husband under Section 9 of the HMA for restitution of conjugal rights are to be decided together by the same Court.

Learned counsel for the petitioner-wife 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 for the petitioner-wife has further relied upon **2022 Live Law (SC) 627 N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha**, wherein Hon'ble Supreme Court has held 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.”

Learned counsel for the respondent-husband has opposed the prayer of the petitioner-wife and prayed for allowing the petition filed by

the respondent-husband.

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 learned counsel for the parties, considering the fact that if the aforesaid petition, filed by the respondent-husband, is not transferred, the petitioner-wife will have to bear the litigation expenses and transportation expenses and also in view of the ratio of law laid down by Hon'ble Supreme Court in ***Sumita Singh***'s case (supra) and ***Rajani Kishor Pardeshi***'s case (supra), this Court deems it appropriate to allow the first petition, with the following directions:-

- (i) *The petition filed under Section 9 of the Hindu Marriage Act, pending before the Additional District Judge, Rupnagar will be transferred to the competent Court of jurisdiction at Batala, Gurdaspur.*
- (ii) *The District Judge, Gurdaspur will assign the said cases to the competent Court of jurisdiction.*
- (iii) *The Additional District Judge, Rupnagar is directed to transfer all the record pertaining to the aforesaid case to District Judge, Gurdaspur.*
- (iv) *The parties are directed to appear before the trial Court at Batala, Gurdaspur within a period of 01*

month from today.

The second petition, bearing TA-267-2021, stands dismissed.

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

03.08.2022
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No