

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

TA 537/2022

Date of decision: 19.12.2022

Monika Kansal

.....Petitioner

Vs.

Satish Goyal

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Divyadeep Walia, Advocate for the petitioner.
Mr. Pushpinder Kaushal, Advocate for the respondent.

Nidhi Gupta, J.

Petitioner-wife has filed this Transfer Petition u/s 24 CPC seeking transfer of petition u/s 13 of the Hindu Marriage Act, 1955 titled as 'Satish Goyal v Monika Goyal' DMC-53/2022 from the court of Addl. Principal Judge, Family Court, Patiala to a court of competent jurisdiction at SAS Nagar (camp at Derabassi).

Learned counsel for the petitioner submits that marriage between the parties was solemnized on 5.12.2014 at Patiala and out of this wedlock two sons namely Navraj and Jasviraj were born on 6.1.2016 and 14.2.2018 respectively. It is further alleged that the respondent husband and his brother Gopal Goyal are greedy persons and used to pressurize petitioner to bring Rs.20 lacs which they wanted to invest in their business. It is further allegation of the petitioner that respondents used to beat her, did not take care of her and also not provided medical facility to her and in these circumstances, she was forced to leave her matrimonial home on 6.11.2021 along with her brother, whereafter she was admitted in a hospital at Panchkula for removal of a lump in her right breast, which developed due to repeated blunt injuries caused by respondent. It is then alleged that respondent with a mischievous mind fabricated story of cruelty and filed divorce petition, transfer of which is being sought in the present petition. It

is averred that faced with acute financial hardship coupled with domestic violence etc., petitioner instituted a petition under Section 125 Cr.PC before the Court at Derabassi; a petition under Section 12 of the Protection of women from Domestic Violence Act; and also moved a complaint to police for registration of criminal case against the respondent which is pending inquiry before Women Cell, SAS Nagar in which respondent is appearing. It is averred that respondent has a monthly income of about Rs.10 lacs from his business whereas petitioner has no means to pursue the ongoing case. Further medical condition, post her treatment is also taken as a ground for transfer of the said petition from Patiala to Courts at Mohali.

Upon notice, respondent has put in appearance and filed short reply by way of affidavit. It has been stated therein that petitioner left her matrimonial home on 7.11.2021 wherefrom she never returned. Respondent filed petition u/s 13 HMA on 19.1.2022 in which the petitioner appeared on 30.5.2022 and as a counterblast to the said petition, petitioner filed FIR against the respondent on 12.3.2022; petition under Section 125 Cr.PC on 14.3.2022; petition under DV Act on 12.5.2022. It is further submitted that the petitioner has filed application under the DV Act for grant of temporary custody of the minor sons only on 1.7.2022. It is then submitted that as regard the so called medical condition of the petitioner, no medical opinion has been placed on record by the petitioner to show that the same is due to injuries caused by the respondent and is not due to any infection. It is further stated that it is incorrect for the petitioner to allege positively that she had to undergo surgery because of injury inflicted by the respondent as investigation in the said case is still pending. It is further submitted that in the petition u/s 13 HMA, of which transfer is sought, petitioner has been proceeded against ex-parte vide order dated 1.10.2022 passed by the learned Family Court. It is also stated that the respondent is to look after his business as well as take care of the well being of the minor children who are in his care and custody and there is no one to look after them as the parents of the respondent are no longer alive. The children are reportedly studying in Class I and LKG at Bhupindra International Public School, Patiala. It is also averred that on 11.10.2022 as per directions of the learned JMIC, Derabassi in proceedings under the DV Act, the respondent brought the minor children after taking leave from their School before the Mediation Centre, SAS Nagar, Mohali, but after waiting there for more than 4

hours, the petitioner did not turn up and informed Mediator telephonically that she was not interested in mediation and meeting the minor children.

Heard learned counsel for the parties.

This Court is well aware of the fact that the preponderance of law in cases of transfer emanating from matrimonial disputes is in favour of the wife. However, in the facts and circumstances of the present case, in my considered view, it will be unfair to allow present petition. It is undisputed that the minor children are in the care and custody of the respondent. As such, the respondent is responsible for their physical and mental well-being. He is working to provide them with the daily amenities of life; and has to be present and available to provide them emotional support as well. Needless to say, the welfare of the children is paramount. The respondent has to look after his business also unlike the petitioner who is not working. Therefore, for the reasons aforesaid he cannot travel frequently.

Moreover, 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: **(2006) 9 SCC 197 '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. Reference in this regard may also be made to two cases of this Court where, in similar circumstances this Court had dismissed transfer applications filed on behalf of the wife. These are: **TA no. 126 of 2018 Smt. Akhwinder Kaur Vs. Sh. Gurpreet Singh**; and **TA No. 299 of 2019 Nisha alias Manisha vs. Amarveer Yadav**.

Accordingly, in view of the facts and circumstances of the present case as noted above, as also the precedents of Case law as above, finding no merit in this petition and the same is hereby dismissed. Pending application(s) if any stand disposed of.

(Nidhi Gupta)
Judge

19.12.2022
Joshi