

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA-637-2022 (O&M)
Date of decision: 13.07.2022

Gagandeep Kaur

....Petitioner

Vs.

Amit Kumar Rathi

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. P.S. Paul, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of petition under Section 9 of Hindu Marriage Act filed by the respondent-husband, pending in the Court of Principal Judge, Family Court, Jagadhari to the competent Court of jurisdiction at Rupnagar.

Learned counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner filed a petition under Section 125 Cr.P.C., which was decided on 18.12.2018 and thereafter, execution petition under Section 128 Cr.P.C. is pending at Rupnagar. It is further submitted 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 150 kms between Rupnagar and Jagadhri.

Learned counsel has further contended that the petitioner is having two minor daughters, who are living in her care and custody and she is facing difficulty to defend the case, as she has to travel from Rupnagar to Jagadhri.

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.*"

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 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 in **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 under Section 9 of Hindu Marriage Act filed by the respondent-husband, pending before the Principal Judge, Family Court, Jagadhari will be transferred to the competent Court of jurisdiction at Rupnagar.*
2. *The District Judge, Rupnagar, will assign the said petition to the competent Court of jurisdiction.*

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 Jagadhari, 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 Jagadhari, in case the respondent opt to contest this petition.*

Present petition is disposed of accordingly.

[ARVIND SINGH SANGWAN]
JUDGE

13.07.2022

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Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No