

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

201

**TA-455-2020 (O&M)
Date of decision: 12.09.2022**

Naveen Kumari

...Petitioner

Versus

Subhash

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Jai Bhagwan Tobria, Advocate
for the petitioner.

Mr. Mohit Rathi, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

While issuing notice of motion on 12.10.2020, the following
order was passed:

“Prayer in the present application is for transfer of
divorce petition titled as "Subhash vs. Naveen Kumari"
filed by the respondent/husband against the applicant-
wife under Section 13 of the Hindu Marriage Act, 1955
(for short 'the Act') from the Court of learned Principal
Judge (Family Court), Jhajjar to the court of competent
jurisdiction at Hisar.

It is stated that the marriage of the couple was
solemnized on 18.02.2018 at Village Uglaan, District
Hisar as per Hindu Rites and out of the wedlock, a
female child, named, Madhu Kumari was born on
29.11.2018. It is alleged that despite a huge amount
being spent on marriage by the family members of the
applicant apart from giving sufficient dowry articles, the
respondent and his family members used to beat the
petitioner. They deserted the petitioner along with her

minor daughter, who is now residing at her parental house in Tehsil Hansi, District Hisar.

It is stated that the petitioner has filed a petition under Section 125 Cr.P.C for her maintenance and her minor daughter, which is pending in the court at Hisar. It is averred that the respondent husband filed a petition under Section 13 of the Act which, as noticed above, is pending in the Court of learned Principal Judge (Family Court), Jhajjar. It is further averred that the petitioner, who is a house wife, has no source of income and she alongwith her minor child is fully dependent upon her parents while the respondent is not paying even a single penny for the upkeep and maintenance of petitioner wife and minor child and in these circumstances, it is extremely inconvenient for the petitioner to attend the proceedings initiated by the respondent husband at Jhajjar, which is about 90 kms away from Hisar.

Notice of motion for 15.12.2020.

Meanwhile, further proceedings before the Court of learned Principal Judge (Family Court), Jhajjar shall remain stayed.”

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 for the petitioner 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.

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 if the aforesaid petition 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), ***Rajani Kishor Pardeshi's*** case (supra) and ***N.C.V. Aishwarya's*** case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

- (i) *The petition filed under Section 13 of the Hindu Marriage Act, pending before the Family Court, Jhajjar will be transferred to the competent Court of jurisdiction at Hisar.*
- (ii) *The District Judge, Hisar will assign the said petition to the competent Court of jurisdiction.*
- (iii) *The Family Court at Jhajjar is directed to transfer all the record pertaining to the aforesaid case to District Judge, Hisar.*
- (iv) *The parties are directed to appear before the trial Court at Hisar within a period of 01 month from today.*
- (v) *The Courts concerned, where the cases are pending between the parties, will accommodate them with one date in a calendar month.*

12.09.2022

Waseem Ansari(ARVIND SINGH SANGWAN)
JUDGE*Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*