

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

Transfer Application No. 942 of 2022

Date of decision: 30.11.2022

Eshpreet Kaur

.....Petitioner

vs

Mandeep Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Arti Kaur Advocate
for the petitioner.

Mr. Parvez Akhtar Dhaliwal, Advocate
for the respondent.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 9 of the Hindu Marriage Act, 1955 (for short 'the Act') titled "Mandeep Singh vs. Eshpreet Kaur" pending in the Court of Principal Judge, Family Court, Moga to a Court of competent jurisdiction at Ludhiana. Petitioner has filed the present petition through her father Shri Parminder Singh Gohal, being her Special Power of Attorney holder as she is presently living in Canada.

2. Learned counsel for the petitioner has contended :-

- i) That the parties were married on 16.1.2021 according to Sikh rites and rituals.
- ii) That no child was born out of this wedlock.

- iii) That the petitioner-wife is living separately from the respondent-husband since 22.2.2021 and living in Canada and studying there.
- iv) That the petitioner is studying in Canada, having no source of income and totally dependent upon her parents and the respondent-husband is not paying anything to her towards maintenance.
- v) That the respondent-husband has filed the petition under Section 9 of the Hindu Marriage Act, which is pending before the Principal Judge, Family Court, Moga.
- vi) That the petitioner has moved a complaint dated 16.5.2022 addressed to the Additional Director General of Police, N.R.I. Wing, SAS Nagar, Mohali, which is pending consideration. The father of the petitioner also moved a criminal complaint dated 24.5.2022 addressed to the Commissioner of Police, Ludhiana against the respondent and others, qua which, father of the petitioner also approached this Court and vide order dated 09.08.2022 in CRM-M-32396 of 2022 titled as 'Parminder Singh Gohal vs. State of Punjab and others', Co-ordinate Bench of this Court issued directions to the Commissioner of Police, Ludhiana to decide the same as per law. The respondent-husband is also stated to be involved in G.D. No.020 dated 19.4.2022, registered at Police Station Special Task Force Wing, Punjab, under the NDPS Act.
- vii) That the distance between place of residence of the petitioner-wife i.e. Ludhiana and the place of proceedings under Section 9 of the Hindu Marriage Act, 1955 filed by the respondent-husband, pending before the Principal Judge, Family Court, Moga, is about 70 kilometers on one side.
- viii) That the petitioner has filed this petition through her father being Special Power of Attorney holder, who is an

old aged person. The respondent-husband has already threatened him to face dire consequences as and when he comes to Moga as the respondent is in the habit of taking intoxicant and kept with him illegal weapons (as shown in the photographs Annexures P-3 and P-4), it would be dangerous for life of her father to visit Moga in connection with Court proceedings pending there.

3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

Upon notice of motion, the respondent has put in appearance through his counsel and controverts the allegations leveled against him by the petitioner-wife and his father as well.

Learned counsel for the respondent has filed reply on behalf of respondent. The same is taken on record. Copy of which is supplied to the learned counsel opposite.

In the reply, the respondent controverted the allegations and submits that the petitioner-wife has concealed the material facts from the Court. He submits that the marriage between him and the petitioner was not as a result of any kind of force, rather the petitioner was having love affair with the respondent since the year 2019 and had a live-in relationship with him and occasionally they used to go on tour to Shimla, Manali and Dalhousie etc. He also refers the photographs of the marriage Annexure R-1 which does not reflect that the petitioner was in any kind of force or fear at the time of marriage and the relatives are also shown to be present behind them. He also refers to photographs Annexure R-2, which were at the time when the petitioner-wife was about to go to Canada and submits that in these

photographs also the petitioner seems to be happy in the company of respondent and his family members.

4. I have heard learned counsel for the parties.

The legal position in such like cases as the present one, is well established. In this regard, judgment of the Hon'ble Supreme Court rendered in **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha," 2022 Live Law (SC) 627**, is most relevant wherein the 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.”

5. Further reliance can be placed upon the judgments in **“Sumita Singh vs Kumar Sanjay”, 2002 SC 396** and **“Rajani Kishor Pardeshivs Kishor Babulal Pardeshi”, 2005(12) SCC 237**, wherein the Hon'ble Supreme Court has 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.”

6. Even this Court in number of cases has followed the aforesaid principle of law. Accordingly, 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 the family condition of the wife, the custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important the 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.

7. In view of the facts mentioned above and the judgments i.e. **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, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The petition filed by respondent husband under Section 9 of Hindu Marriage Act, 1955, bearing HMA/436/2022 titled as ‘Mandeep Singh vs. Eshpreet Kaur’, pending in the Court of Principal Judge, Family Court, Moga is transferred to a Court of competent jurisdiction at Ludhiana.
- b) The Id. District Judge, Moga is directed to transfer complete record pertaining to the aforesaid case to District Judge, Ludhiana.

c) The parties are directed to appear before the District & Sessions Judge, Ludhiana on 20.1.2023.

d) The District Judge, Ludhiana will assign the said petition to the Court of competent jurisdiction.

8. The concerned Court at Ludhiana will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.

9. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

11. I am supported by the decisions rendered by a Co-ordinate Bench of this Court in **TA No. 1315/2022, Rohini Arora v Nitin Talwar; TA No. 1322 of 2022, Jaswinder Kaur v Gurvinderjeet Singh; and TA No. 1323 of 2022, Usha Rani v Karmajit Singh.**

Disposed of.

Pending application(s), if any, stands disposed of.

November 30, 2022

Vijay Asija

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned

YES/NO

Whether Reportable

YES/NO