

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

205

TA-1113-2021 (O&M)
Date of decision: 28.10.2022

Mamta Sharma

...Petitioner

Versus

Jagmohan

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Abhay Kumar Sharma, Advocate
for the petitioner.

Mr. A. P. S. Rehan, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 13(1) of the Hindu Marriage Act, 1955, pending before the Family Court, Hoshiarpur to the competent Court of jurisdiction at Camp Court at Phagwara.

While issuing notice of motion on 15.11.2021, the following order was passed:

“Learned counsel for the petitioner would contend that the petitioner has to travel a distance of approximately 80 kilometres (to and fro) in order to attend the proceedings before the concerned Court at Hoshiarpur. He would further contend that there are three applications - under Section 128 of the Code of Criminal Procedure, 1973 being CRM/42/2021, CRM/38/2021 and CRM/92/2021 and one application under Section

127 CrPC - which are also pending in the Court concerned at Phagwara, District Kapurthala.

Notice of motion returnable 16.12.2021.”

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(1) of the Hindu Marriage Act, pending before the Family Court, Hoshiarpur will be transferred to the*

competent Court of jurisdiction at Phagwara.

- (ii) The District Judge, Kapurthala will assign the said petition to the competent Court of jurisdiction.*
- (iii) The Family Court at Hoshiarpur is directed to transfer all the record pertaining to the aforesaid case to District Judge, Kapurthala.*
- (iv) The parties are directed to appear before the Camp Court at Phagwara 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.*

28.10.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No