

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

105

TA-1114-2022 (O&M)
Date of decision: 20.09.2022

Reeta Rani**...Petitioner**

Versus

Sandeep Kumar**...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Hitesh Kumar Sammi, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled as ***Sandeep Kumar vs. Reeta Rani***, pending before the Family Court, Ludhiana, Camp Court at Samrala to the competent Court of jurisdiction at SBS Nagar.

Learned counsel for the petitioner submits that the marriage between the petitioner and respondent was solemnized on 11.05.2009 and out of the said wedlock, two children were born. It is further submitted that since the respondent-husband is an arrogant person, having short temperament, a dispute arose between the parties and the petitioner-wife is residing at SBS Nagar with his father and brother, who is serving in Army.

Learned counsel for the petitioner further submits that on account of the said matrimonial discord, the petitioner has filed a petition under Section 125 Cr.P.C. at SBS Nagar, which is pending. It is further submitted that the respondent-husband has filed the present petition under Section 13 of the Hindu Marriage Act at Samrala in order to harass the

petitioner. It is further submitted that the petitioner is facing great difficulty in prosecuting the said case, as there is a distance of about 120 Kms between the aforesaid two places and the petitioner apprehends threat to her life and liberty at Samrala at the hand of respondent-husband.

Learned counsel for the petitioner relies upon ***Sumita Singh Vs. Kumar Sanjay, 2002 SC 396*** as well as ***2022 Live Law (SC) 627 N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha*** to submit that Hon'ble Supreme Court has held that while deciding the transfer applications, the convenience of the wife must be looked at.

I have heard learned counsel for the petitioner.

A perusal of the present petition as well as the petition filed by the respondent-husband under Section 13 of the Hindu Marriage Act shows that there are two minor children born out of this wedlock, who are living in the care and custody of the respondent-husband and he is maintaining both the minor children.

Hon'ble Supreme Court in ***Kulwinder Kaur @ Kulwinder Gurcharan Singh vs. Kandi Friends Education Trust & Ors, (2008) 3 SCC 659*** has held that although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, however, it cannot be gainsaid that the power to transfer a case must be exercised with due care, caution and circumspection. Hon'ble Supreme Court also referring to certain broad propositions regarding transfer of cases held that balance of convenience of the parties and witnesses are one of the grounds while deciding the transfer petition. Even in ***Anindita Das vs. Srijit Das; (2006) 9 SCC 197***, Hon'ble Supreme Court held that leniency of the Court is being misused by the

women and held that the Court is required to consider each petition on its own merits.

In the case in hand, the matrimonial relation of the parties became sour after about 12 years of their marriage, consequent to which, the petitioner-wife is residing at his paternal home and the respondent-husband is maintaining both the minor children, who obviously must be going to school for their studies.

On a Court query whether the petitioner-wife has filed any petition seeking custody of the minor children, learned counsel for the petitioner replied in negative, which reflects the bent of mind the petitioner-wife that she is not interested in the upbringing of her minor children and is also not interested in visitation right to bestow motherly love and affection to her children.

Therefore, after hearing learned counsel for the petitioner and considering the facts and circumstances of the case, this Court finds that for the sake of balance of convenience, it would not be appropriate to transfer the said divorce petition as sought by the petitioner, because it is the respondent-husband, who is maintaining both the minor children and in case he travels to attend the proceedings at SBS Nagar, the overall care and studies of the children will be adversely affected. Moreover, the petitioner-wife does not seem to be interested at all to keep the children with her as she has not filed any petition seeking their custody so far.

Accordingly, the present petition is dismissed.

20.09.2022

Waseem Ansari

*Whether speaking/reasoned
Whether reportable*

(ARVIND SINGH SANGWAN)

JUDGE

*Yes/No
Yes/No*