

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

TA No. 1291 of 2022

Date of decision: November 09, 2022

Aarti

.....Petitioner

v

Vikas Sharma

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ramandeep Singh, Advocate for the petitioner.

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 13 of the Hindu Marriage Act, 1955, bearing HMA 661/2022 titled "Vikas Sharma v Aarti" pending in the Court of Principal Judge, Family Court, Ludhiana to a court of competent jurisdiction at Kanina, Distt. Mahendergarh.

2. It is stated by the petitioner in the petition:

i) that the marriage between the parties was solemnised on 2.12.2019 according to Hindu rites and rituals. No child was born out of this wedlock.

ii) that due to ill treatment towards the petitioner by the respondent and his family members, she filed FIR No.27 dated 19.5.2021 under Sections 323, 354, 354-B, 377, 406, 498-A, 506, 509 IPC at Women Police Station, Narnaul,

District Mahendergarh, in which on an application moved by the respondent for re-investigation, police cancelled the FIR but the next date before the trial court is fixed as 25.1.2023

iii) that the petitioner has also filed a petition under Section 125 Cr.PC, before Family Court, Kanina, District Mahendergarh, Camp Court, Mahendergarh.

iv) that respondent has now filed a petition under Section 13 of the HMA before Principal Judge, Family Court, Ludhiana which was fixed for 29.9.2022.

v) that the distance between her place of residence at Kanina and Ludhiana is 400 kilometers.

vi) that in case of transfer of proceedings from Ludhiana to Kanina, no prejudice would be caused to the respondent since he is already attending the proceedings before the Court at Kanina in proceedings under Section 125 Cr.PC.

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

4. 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 Pardeshi vs 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. After going through the entire paperbook, 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 case, notice of motion is issued, even the respondent-husband has to bear the litigation expenses and in view of 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 13 of the Hindu Marriage Act pending in the Court of Principal Judge, Family Court, Ludhiana is transferred to a Court of competent jurisdiction at Kanina, Distt. Mahendergarh at Camp Court, Mahendergarh.

b) The Id. District Judge, Ludhiana is directed to transfer complete record pertaining to the aforesaid case to District Judge, Mahendergarh.

c) The parties are directed to appear before the District & Sessions Judge, Mahendergarh on 9.12.2022

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

8. The concerned Court at Kanina, Distt. Mahendergarh 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.

10. However, liberty is granted to the respondent to revive this petition, if he intends to contest the same, provided that:-

(a) The respondent will clear all arrears of maintenance amount, if any, in terms of any 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 District Courts, Ludhiana on each and every date of hearing.

(c) The respondent will bring a demand draft of Rs.25,000/-, drawn in favour of petitioner, towards the litigation expenses to pursue the case at District Ludhiana in case the respondent opts to contest this petition.

11. I am supported in the above by 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 Gurbinderjeet Singh; and TA No. 1323 of 2022, Usha Rani v Karmajit Singh.**

12. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in these peculiar

circumstances, in order to ensure appearance of the parties before the District Judge, Mahendergarh on 9.12.2022, it is directed that a copy of this order be sent to the respondent through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioner through her counsel is directed to ensure her appearance accordingly.

Disposed of.

9th November,2022
Joshi

(Nidhi Gupta)
Judge