

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

TA No. 1213 of 2021

Date of decision: November 09, 2022

Davinder Kaur @ Shama Rani

.....Petitioner

v

Bhuvnesh

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. GS Jagpal, Advocate for the petitioner.

Mr. Bhanu Pratap Singh, 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 12 of the Hindu Marriage Act, 1955, bearing HMA 620/2021 titled “Bhuvnesh v Davinder Kaur @ Shama Rani” pending in the Court of Principal Judge, Family Court, Hoshiarpur to a court of competent jurisdiction at Ludhiana.

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

i) that the marriage between the parties was solemnised on 18.8.2021 according to Sikh rites and rituals. No child was born out of this wedlock.

ii) that at the time of marriage both; petitioner and respondent were divorcee and petitioner had allegedly disclosed to the respondent and his family members the fact of having a male child from her previous marriage.

iii) that the petitioner was ill treated, given beatings and harassed by the respondent and his family members for allegedly bringing less dowry, not meeting their demand for bringing Alto car or Rs.5 lakhs.

iv) that the petitioner was turned out of her matrimonial home on 7.9.2021.

iv) that respondent has now filed a petitioner under Section 12 of the HMA before Principal Judge, Family Court, Hoshiarpur, which is fixed for 21.12.2021.

v) that the distance between her place of residence and Court at Hoshiarpur is 160 kms. (to and fro).

vi) that petitioner has also filed a petition under Section 125 Cr.PC besides filing a complaint under Section 9 of the HMA at District Courts at Ludhiana.

vii) that the parents of the petitioner are aged and unable to accompany her to Hoshiarpur on each and every date. Moreover, she has no source of income to maintain herself and is fully dependent on her parents.

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 hearing the learned counsel for the parties 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 12 of the Hindu Marriage Act, bearing HMA 620/2021 pending in the Court of Principal Judge, Family Court, Hoshiarpur is transferred to a Court of competent jurisdiction at Ludhiana.

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

c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Ludhiana on 9.12.2022.

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.

Disposed of.

9th November,2022
Joshi

(Nidhi Gupta)
Judge