

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

**TA-1227-2021 (O&M)
Date of decision: 18.07.2022**

Asha Rani

...Petitioner

Versus

Kashmir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Ashish Nagar, Advocate
for the petitioner.

None for the respondent, despite service.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the respondent-husband under Section 9 of the Hindu Marriage Act, 1955, titled as *Kashmir Singh vs. Asha Rani*, pending in the Court of the Principal Judge, Family Court, Jalandhar to the competent Court of jurisdiction at S. B. S. Nagar.

On 13.12.2021, while issuing notice of motion, the following order was passed:

“Learned counsel for the petitioner would contend that the petitioner-wife would have to travel a distance of about 108 kilometres (up & down) from her place of residence in SBS Nagar (Nawanshahr) in order to attend to the proceedings initiated by the respondent-husband under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights at Jalandhar and, hence, she would not be able to properly defend her case on each and every date of hearing. It has further been contended that one case initiated by the petitioner under Section 125 CrPC seeking maintenance as well as a case filed by

the respondent under Section 7 read with Section 25 of the Guardian and Wards Act, 1890 are already pending at SBS Nagar.

Notice of motion returnable 20.12.2021.”

Learned counsel for the petitioner has argued that on account of a matrimonial discord, the petitioner has filed a petition under Section 125 Cr.P.C. and as a counter-blast to the said case filed by the petitioner-wife, the respondent-husband has filed the present petition under Section 9 of the Hindu Marriage Act at Jalandhar, though a petition, filed by the respondent, under Section 7 read with Section 25 of the Guardian and Wards Act, 1890 is also pending at S.B.S. Nagar. It is further submitted that the petitioner is facing great difficulty in prosecuting the said case, as there is a distance of about 85 kms between Jalandhar and S. B. S. Nagar.

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.*”

As per office report, the respondent is duly served, however, there is no representation on his behalf.

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 petitioner, 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) and **Rajani Kishor Pardeshi's** case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

- (i) *The petition filed under Section 13 of the Hindu Marriage Act, pending before the Principal Judge, Family Court, Jalandhar will be transferred to the competent Court of jurisdiction at S.B.S. Nagar.*
- (ii) *The District Judge, S.B.S. Nagar will assign the said petition to the competent Court of jurisdiction.*
- (iii) *The Family Court at Jalandhar is directed to transfer all the record pertaining to the aforesaid case to District Judge, S.B.S. Nagar.*
- (iv) *The parties are directed to appear before the trial Court at S.B.S. Nagar within a period of 01 month from today.*

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

- (i) *The respondent will clear all the arrears of maintenance amount, if any, in terms of the 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.

- (ii) *The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Jalandhar, on each and every date of hearing.*
- (iii) *The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Jalandhar, in case the respondent opts to contest this petition.*

18.07.2022

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No