

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No.1234 of 2022 (O&M)
Date of decision: 17.10.2022

Arshdeep Kaur
.....Petitioner
Versus
Gurinder Singh
.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Achin Gupta, Advocate
for the petitioner.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for transfer of the petition filed under Section 13(ia)(ib) of the Hindu Marriage Act, pending in the Family Court, Ludhiana to the competent Court of jurisdiction at Faridkot.

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 a petition/complaint under the Domestic Violence Act at Faridkot.

Counsel for the petitioner has further submitted that the respondent/husband has filed the petition under Section 13(ia)(ib) of the Hindu Marriage Act, as a counter-blast, before the Principal Judge, Family Court, Ludhiana.

Counsel for the petitioner has also argued that on account of a petition filed by the respondent/husband, the petitioner is facing great difficulty in prosecuting the said case as there is a distance of about 120 Kms from Faridkot to Ludhiana.

Counsel for the petitioner has further contended that the petitioner is having a minor child, who is living in her care and custody and she is facing difficulty to defend the case as she has to travel from Faridkot to Ludhiana.

Counsel for the petitioner has also argued that on an earlier occasion, the petitioner filed TA No.501 of 2019, for transfer of the divorce petition from Ludhiana to Faridkot and the same was allowed on 18.11.2019, by passing the following order:-

“Applicant Arshdeep Kaur, aged about 27 years, estranged wife of Gurinder Singh-respondent, presently residing with her parents at Village Bargari, District Faridkot on account of matrimonial discord between the spouses, by way of filing the instant application seeks transfer of petition under Section 13 of the Hindu Marriage Act filed by her husband Gurinder Singh against her having title 'Gurinder Singh Vs. Arshdeep Kaur' pending in the Court of Additional Principal Judge, Family Court, Ludhiana to the Court of competent jurisdiction at Faridkot.

According to the applicant, the marriage performed between the parties on 30.12.2015 ran into rough weather. The applicant was harassed for bringing less dowry by respondent and his family members, therefore, she had to leave the matrimonial home and start residing with her parents since 30.3.2017. She does not have any source of income. She is taking care of minor son of the parties namely Jobanpreet, aged about 1½ years. The applicant has filed petition under Section 125 Cr.P.C. for grant of maintenance for her as well as for her minor son. The applicant has also filed complaint under Sections 498-A/406/499/500/506 IPC in the Court of Chief Judicial Magistrate, Faridkot. The respondent has filed the petition in question just to harass her. It is, difficult for her to travel from her parental place to Ludhiana so as to attend the dates of hearing in the Court there, therefore, the application be accepted.

Notice of the application was given to the respondent, who has put in appearance through his counsel and is vehemently opposing the application.

I have heard learned counsel for the parties besides going through the record.

The Apex Court in various judgments has observed that in matrimonial disputes between the spouses convenience of wife should be looked into. In that regard a reference can be made to authority Sumita Singh Versus Kumar Sanjay and another, 2002 AIR(SC) 396 by a Division Bench of Hon'ble Supreme Court.

In Bhartiben Ravibhai Rav Versus Ravibhai Govindbhai Rav, 2017(3) RCR(Civil) 369, the Apex Court had allowed application for transfer of the divorce petition to a place where the wife was residing considering various factors including the distance between the place where the wife was residing and the place of sitting of the Court where divorce petition had been instituted and the fact that the wife had filed two cases against her husband in the Court at the place of her residence wherein the respondent had already put in appearance.

In Apurva Versus Navtej Singh, 2017(2) Law Herald 966 by a Co-ordinate Bench of this Court, it was observed that wherever the Courts are called upon to consider the plea of transfer in matrimonial disputes, the Courts have to take into consideration various factors like economic soundness of either of the parties, the social strata of the spouses to which they belong and behavioural pattern, standard of life antecedents of marriage. Generally it is the wife's convenience, which must be looked at by the Courts while deciding the transfer application.

Keeping in view the contentions in the application and submissions made by learned counsel for the applicant, in which I find merit, in absence of any strong circumstance to the contrary, it would be proper and appropriate if the application is accepted. The same is accordingly allowed. The petition in question is ordered to be withdrawn from the Court of Additional Principal Judge, Family Court, Ludhiana and transferred to Family Court at Faridkot for disposal in accordance with law.

The parties through their counsel are directed to appear in the transferee Court on 17.12.2019. Copies of orders be sent to the Court of Additional Principal Judge,

Family Court, Ludhiana as well as to the Family Court at Faridkot for information and necessary compliance.”

Later on, the said petition filed under Section 13 of the Hindu Marriage Act was withdrawn by the respondent/husband on 18.03.2021 and now again, he has filed the second petition under Section 13 (ia)(ib) of the Hindu Marriage Act at Ludhiana.

Counsel for the petitioner 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 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.”*

Counsel for the petitioner has also relied upon the judgment **“N.C.V. Aishwarya vs A.S. Saravana Karthik Sha,” 2022 Live Law (SC) 627**, wherein the Hon’ble Supreme Court has observed 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.”

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.

After hearing the counsel for the petitioner, 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 deem it appropriate to allow the present petition, subject to the following conditions:-

1. *The petition filed under Section 13(ia)(ib) of the Hindu Marriage Act, pending before the Family Court, Ludhiana will be transferred to the competent Court of jurisdiction at Faridkot.*
2. *The District Judge, Faridkot, will assign the said petition to the competent Court of jurisdiction.*
3. *The Family Court, Ludhiana is directed to transfer all the record pertaining to the aforesaid case to District Judge, Faridkot.*
4. *The parties are directed to appear before the trial Court, Faridkot, within a period of 01 month from today.*
5. *The Family Court, Faridkot 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.*
6. *The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.*

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

- (a) *The respondent will clear all arrears of maintenance amount, if any, in terms of a 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 Ludhiana, on each and every date of hearing.*
- (c) *The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Ludhiana in case the respondent opt to contest this petition.*

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

17.10.2022

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No