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

CRM-M-50360-2022

Date of Decision: October 31, 2022

Narender Singh

.....Petitioner

Versus

Bindu Kanwar

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Abhimanyu Singh, Advocate
for the petitioner.

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RAJESH BHARDWAJ, J.

This petition has been filed by the petitioner praying for transfer of case No.COMA-72 of 2019, filed by the respondent/wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (for brevity,'the POCSO Act'), titled as Bindu Kanwar versus Narender Singh and others from the Court of Sub-Divisional Judicial Magistrate, Loharu, District Bhiwani to the Court of Sub-Divisional Judicial Magistrate, Mahendergarh, District Mahendergarh.

It has been contended by counsel for the petitioner that the petitioner was married to respondent on 08.02.2014. Thereafter, they were blessed with two children. However, the matrimonial discord took place between both, the husband and the wife, as the respondent/wife is quarrelsome by nature and used to raise disputes on petty issues. He has submitted that in order to harass and humiliate the petitioner, the respondent/wife filed a complaint under Section 12 of the POCSO Act for the relief under Sections 17, 18, 19, 20 and 22 of the POCSO Act. He also submits that thereafter she filed a false and frivolous complaint in the office

of Superintendent of Police, Bhiwani Tehsil and District Bhiwani vide complaint bearing Diary No.180-PG, dated 12.04.2019, and the investigating agency without probing into the allegations levelled by the respondent/wife got registered false and frivolous FIR No.101, dated 06.05.2019, under Sections 323, 34, 498-A, 506 IPC, registered at Police Station Loharu, District Bhiwani, which is fixed for prosecution evidence. Counsel has submitted that the petitioner always wants to reconcile with the respondent/wife but she has left the matrimonial home without any rhyme and reason and she is not ready to rehabilitate in the matrimonial home. He has further submitted that the respondent/wife has initiated the prosecution of the petitioner in the above-mentioned complaint under the POCSO Act only to humiliate and harass the petitioner which has been filed against entire family of the petitioner. He submits that parents of the petitioner are old aged persons and the distance between the district Court Mahendergarh and Sub Divisional Court Loharu is about 130 kms. He has further submitted that whenever the petitioner goes to attend the proceedings in the ongoing complaint, he gets life threats from the parents and relatives of the respondent/wife. He has submitted that in view of this and to meet the ends of justice, the trial of this complaint be transferred from Sub Divisional Judicial Magistrate, Loharu, District Bhiwani to the Court of competent jurisdiction at Mahendergarh.

Heard.

Relationship between the petitioner and respondent/wife is not in dispute. The litigation between both of them is going on under the POCSO Act and also in one above-mentioned FIR No.101, dated 06.05.2019, in which the prosecution evidence is already going on. The

contentions raised by the petitioner/husband before this Court for transferring the trial is primarily for the reason that he gets the threat from the relatives of the respondent/wife. If it is assumed that the petitioner is aggrieved on account of the same, then he has ample of remedies for redressal of his grievances. There is nothing on record to substantiate the contentions raised by counsel for the petitioner. Section 407 Cr.P.C. reads as under:-

“Section 407. Power of High Court to transfer cases and appeals.-(1) Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself.”

It is apparent from the reading of the statutory provisions that

though this Court has power to transfer the trial of a case, however, the same

cannot be invoked in a cavalier manner.

In Ashish Chadha vs Asha Kumari and another (2012) 1 SCC 680, it has been held that unless a very strong case based on concrete material is made out, transfer should not be ordered.

This Court does not find any merit in the petition and the same is hereby dismissed.

October 31, 2022
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |