

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

TA No. 1349 of 2022

Date of decision: 07.11.2022

Anju @ Sushima

.....Petitioner

v

Akram

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- None.

Nidhi Gupta, J.(Oral)

1. The Lawyers are abstaining from work.
2. Prayer in this petition filed by petitioner wife is for transfer of the petition filed by respondent-husband under Section 2(ix) of Chapter X of Muslim Marriage Act, 1939, titled "Akram v Sushima" pending in the Court of Ld. Principal Judge, Family Court, Bhiwani for 12.12.2022 to a Court of competent jurisdiction at Mahendergarh.
3. It is stated by the petitioner in the petition:
 - i)that the parties were married on 30.10.2020 according to Muslim rites and ceremonies.
 - ii) that with a motive to harass the petitioner and his family the respondent has filed aforesaid petition at Bhiwani with false allegations.
 - iii) the petitioner is living with her parents at Mahendergarh which is more than 70 kms. away from Bhiwani.

iv) there is no one in the family to accompany her to attend the proceedings initiated by respondent-husband at Bhiwani.

v) respondent is already attending proceedings under Section 498-A IPC; the Protection of Women from Domestic Violence Act, 2005; and Section 125 Cr.P.C, initiated by the petitioner at Mahendergarh as respondent is not paying even a single penny to her to maintain herself and to take care of her day to day medical needs.

vi) respondent and his family members are very influential having local clouts and thus petitioner will not be able to defend her interest in litigation at Bhiwani.

4. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 2 above, from Bhiwani to Mahendergarh.

5. 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.”

6. 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.”

7. 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.

8. 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 2(ix) of the Muslim Marriage Act, 1939, pending in the Court of Ld. Principal Judge, Family Court, Bhiwani, which is pending for 12.12.2022, is transferred to a Court of competent jurisdiction at Mahendergarh.
- b) The Id. District Judge, Bhiwani 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 02.12.2022.
- d) The District Judge, Mahendergarh, will assign the said petition to the Court of competent jurisdiction.

9. The concerned Court at 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.

10. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

11. 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, Bhiwani, 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 Bhiwani in case the respondent opts to contest this petition.

12. 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 Gurvinderjeet Singh; and TA No. 1323 of 2022, Usha Rani v Karmajit Singh.**

13. As already notice above, today neither the counsel for the petitioner nor the petitioner has come present. Accordingly, in these peculiar circumstances, in order to ensure appearance of the parties

before the District Judge, Mahendergarh on 02.12.2022, it is directed that a copy of this order be sent to the parties through registered post, besides sending a copy of this order to the District Judges concerned through e-mail.

Disposed of.

07.11.2022
ashok
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(Nidhi Gupta)
Judge