

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA 1447/2022

Date of decision: November 30, 2022.

Vishali Mehta and others

.....Petitioners

Vs.

Mangat Ram Mehta and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Pranav Chamoli, Advocate for the petitioners.

Nidhi Gupta, J.

Prayer in this Transfer petition under Section 24 read with Section 151 CPC is for transferring the civil suit for Recovery of Compensation/ Damages (for moving a false complaint with the police) bearing CS/1314/2022, titled 'Mangat Ram Mehta and others v Vishali Mehta and others' from the court of Civil Judge (Junior Division) Jalandhar to a court of competent jurisdiction at Amritsar.

It is submitted by the learned counsel for the petitioners that marriage of petitioner no.1- Ms.Vishali Mehta was solemnized with Sandeep Mehta, son of respondent no.1 on 23.2.2012 at Amritsar according to Hindu

rites and ceremonies and the couple was blessed with a female child now aged 9 years named Parul and currently residing with the petitioner at Amritsar. It is alleged that due to persistent demand of dowry, the petitioner finally left her matrimonial home along with their minor daughter and currently both of them are residing at the parental home of petitioner no.1 at Amritsar. With regard to mental and physical abuse and demand of dowry by respondents, petitioner filed a police complaint dated 25.3.2022 at Jalandhar which at present is under investigation and stands transferred to Amritsar upon her request. As a counter blast, the respondents have now filed a suit for recovery of compensation/damages (Annexure A-1) against petitioner no.1(daughter-in-law of Respondent no.1), and her parents and maternal uncle in the Courts at Jalandhar, transfer of which is sought in the present petition. It is submitted that petitioner no.1 is suffering from depression, erratic BP and slip disc problems; her father who is petitioner no.2 is 67 years old is a chronic patient having undergone knee replacement surgery of both knees, partial pancreas removal, prostate surgery as also suffering from allied age related problems viz diabetes, cardiac and other neuro related problems. Petitioner no.3, mother of petitioner no.1, aged 65 years is bed ridden due to advanced stage of spinal degradation and injuries; besides suffering from urological and cardiac problems; and that petitioner no.4, who is maternal uncle of petitioner no.1, aged 55 years is also suffering from severe thyroid and heart related problems. It is thus, submitted that all the petitioners due to their age and medical condition are incapacitated to travel to Jalandhar Courts to attend the proceedings in the said suit, being 1-1/2 hours' journey by public transport as the distance between Amritsar and Jalandhar is about 95 kms (one side). It is then submitted that financially, petitioner no.1 alongwith her minor daughter is dependent upon her parents, she being unemployed; while the

respondents are comparatively better placed having been gainfully employed and in receipt of substantial earnings/income.

During the course of arguments, learned counsel for the petitioners has made additional prayer that this Court in exercise of its powers under Article 227 of the Constitution, quash the Civil Suit in question filed by the respondents/plaintiffs against the petitioners/defendants. In making this prayer, learned counsel for the petitioners has relied upon judgment of this Court in TA No.212/2012 titled **Chander Kanta Mangotra vs. Janak Raj;** and that of Mysore High Court in **Bolandauda Pemmaya and another v Ayaradara Kushalappa, Law Finder Doc Id # 325776.** However, this Court is not inclined to accept this prayer. Both the proceedings, being the Civil Suit filed by the respondents herein, as well as the police complaint filed by the petitioner No. 1 herein are at a nascent stage, and therefore, this Court does not deem it proper to interfere. In any case, this petition is under Section 24 read with Section 151 CPC, as also the prayer clause of this petition does not disclose such a prayer. As such, this oral prayer on behalf of the petitioners is rejected.

As regards the prayer for transfer of the pending Civil Suit from Courts at Jalandhar to Amritsar, it is clear from the facts enumerated above that all the petitioners maintain serious health issues. Moreover, petitioner No. 1 is single-handedly looking after the minor daughter born out of the wedlock between her and Sandeep-son of petitioner no.1. Further, besides the police complaint filed by petitioner No. 1, petition under S. 13 of the Hindu Marriage Act is also pending at Amritsar, the same being HMA 121 of 2022 registration date 24.1.2022, pending adjudication before the Court of Principal Judge, Family Court, Amritsar. Further, the above facts show that the marital discord

between the petitioner No. 1 with son of respondent no.1 is the genus of this dispute/ civil suit which is now unfortunately spilling over into the extended family. 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.”

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.”

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.

After going through the entire paperbook, considering the fact that issuance of notice to the respondents 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 respondents have 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 Civil Suit, pending in the Courts at Jalandhar, as noticed in the opening para of this order is transferred from the Court of Civil Judge (Jr.Div.)Jalandhar to a Court of competent jurisdiction at Amritsar.
- b) The Id. District Judge, Jalandhar is directed to transfer complete record pertaining to the aforesaid Civil Suit to District Judge, Amritsar.
- c) The parties are directed to appear before the District & Sessions Judge, Amritsar on 23.12.2022.

d) The District Judge, Amritsar will assign the said civil suit to the Court of competent jurisdiction.

The concerned Court at Amritsar 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.

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 respondents to revive this petition, if they intend to contest the same, provided that:-

(a) The respondents will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner no.1 for attending the Court proceedings at District Courts, Jalandhar on each and every date of hearing.

(b) The respondents will bring a demand draft of Rs.25,000/-, drawn in favour of petitioner no.1, towards the litigation expenses to pursue the case at District Jalandhar in case the respondent opts to contest this petition.

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.**

As already noticed above, since the petition is being disposed of without issuing notice to the respondents, accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District

Judge, Amritsar on 23.12.2022, it is directed that a copy of this order be sent to the respondents through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioners through their counsel are directed to ensure their appearance accordingly.

Disposed of.

Pending application(s),if any, also stand disposed of.

November 30,2022
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No