

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

Transfer Application No. 1466 of 2022 (O & M)

Date of decision: 30.11.2022

Manjeet Rani

.....Petitioner

vs

Pawan Rai

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Tanvir Singh Attariwala, Advocate
for the petitioner.

NIDHI GUPTA, J.(Oral)

1. Present transfer petition has been filed by petitioner-mother-in-law seeking transfer of the Civil Suit No.CS/4464/2020 titled as 'Pawan Rai vs. Manjeet Rani' filed by the respondent herein, who is son-in-law of present petitioner. The respondent's Civil Suit is for mandatory injunction seeking a direction to the petitioner herein to return the original Cheque No.761242 dated 06.10.2020 amounting to Rs.3,50,000/- to the respondent. The said Civil Suit is pending before the Civil Judge (Jr. Divn.), Ludhiana. Transfer is sought to a Court of competent jurisdiction at Jalandhar.

2. Learned counsel for the petitioner submits that the marriage of the daughter of the petitioner, namely, Poonam Thapar was solemnized with the respondent-Pawan Rai on 04.12.2016 as per Hindu Rights and Ceremonies and out of that wedlock, one girl child was born on 10.11.2017. It is further submitted that under the

compelling circumstances, daughter of the petitioner alongwith her minor daughter left the matrimonial home on 20.3.2019 and Poonam Thapar moved a complaint against the respondent and his family members regarding cruelty. It is submitted that said Poonam Thapar died on 09.10.2019 and request was made to the police by the petitioner that FIR be lodged against the respondent and his family members.

That during the pendency of criminal complaint before the Senior Superintendent of Police, Kapurthala, the respondent compromised the matter with the petitioner by admitting his fault and left the minor girl forever with the petitioner as he wanted to get married with another girl. The petitioner has taken the responsibility for well-being of the minor daughter and the compromise to this effect was reduced in writing between the petitioner and respondent on 10.10.2019 and the custody of minor girl is retained with the petitioner since then. It is further submitted that to protect the future of the minor girl, the petitioner again entered into a compromise dated 09.12.2019 with the respondent, whereby the respondent agreed to pay a sum of Rs.7,00,000/- towards welfare of the minor daughter in custody of petitioner. The said compromise was witnessed by brother as well as brother-in-law of the respondent. As per terms of the said compromise, a sum of Rs.3,50,000/- in cash were handed over to the petitioner by the respondent and for payment of balance amount of Rs.3,50,000/- respondent requested for six months time and accordingly issued a Cheque No.761239 dated 09.6.2020 (Annexure P-2).

In the month of June 2020, the respondent approached the petitioner and asked to return the aforesaid cheque dated 09.6.2020 on the pretext that due to Covid-19, he could not get salary from his department and as such was not in a position to pay the remaining amount on the date mentioned in the cheque i.e. 09.6.2020. The respondent in lieu of the said cheque offered the petitioner to give another cheque of same amount so that the same can be utilized for the welfare of the child. The petitioner by believing the respondent, accepted the new Cheque No.761242 dated 06.10.2020 in lieu of Cheque No.761239 dated 09.6.2020.

It was very shocking for the petitioner that after presentation of the new cheque, given by the respondent to her, the said cheque was dishonoured. Consequently, the petitioner filed a criminal complaint under Section 138 of Negotiable Instruments Act, which is pending before the Judicial Magistrate 1st Class, Jalandhar and in that complaint case, summoning order dated 07.1.2021 (Annexure P-5) against the respondent had been issued.

It is in this background that the respondent has filed the Civil Suit for mandatory injunction against the petitioner directing her to return the original Cheque No.761242 dated 06.10.2020 amounting to Rs.3,50,000/- and also for permanent injunction restraining the petitioner herein from misusing and presenting the said cheque.

The respondent/son-in-law had also filed a petition under Section 25 of the Guardian and Wards Act for claiming custody of the minor daughter, which was pending before the Principal Judge, Family Court, Ludhiana but the said petition was transferred from the

Court of Principal Judge, Family Court-cum-District Judge, Ludhiana-cum-Guardians and Wards Judge, Ludhiana to the Court of competent jurisdiction at Jalandhar, vide order dated 16.11.2022 passed by this Court in T.A. No.429 of 2020 (Annexure P-6).

Learned counsel for the petitioner submits that the petitioner is a widow, old aged and senior citizen lady, is not in a position to travel to Ludhiana to defend her case and further she is taking care of the minor girl, who is just five years old and the distance between Ludhiana and Jalandhar is approximately 70-80 kilometers.

3. It is *inter alia* on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

4. I have heard learned counsel for the petitioner. I find merit in the submissions advanced on behalf of the petitioner. It is unfortunate that matrimonial disputes conflagrate into the extended family leading to all-round disharmony. Clearly, the petitioner being old is unable to travel, and it will be very difficult for her to undertake frequent travel to Ludhiana to defend this Civil Suit, which is at a distance of about 70–80 km one way. Moreover, as noticed above, the respondent's custody petition under G & W Act, as also the Criminal Complaint No. NACT/3611/2020 are already pending at Jalandhar. Most importantly, the petitioner has to look after the minor child who by now is stated to be very attached to her. It is clear from the record that the petitioner has been taking care of the minor child since 2019. Needless to say, it is the interest of the minor child that is paramount.

5. After going through the entire paper-book, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner will have to bear the litigation expenses and transportation expenses and in case, notice of motion is issued, even the respondent has to bear the litigation expenses and in view of the mandate of and powers conferred under Section 24, CPC, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The Civil Suit No.CS/4464/2020, titled as 'Pawan Rai vs. Manjeet Rani', pending before the Civil Judge (Jr. Divn.), Ludhiana is ordered to be transferred to a Court of competent jurisdiction at Jalandhar.
- b) The Id. District Judge, Ludhiana is directed to transfer complete record pertaining to the aforesaid case to District Judge, Jalandhar.
- c) The parties are directed to appear before the District & Sessions Judge, Jalandhar on 10.1.2023.
- d) The District Judge, Jalandhar will assign the said petition to the Court of competent jurisdiction.

6. The concerned Court at Jalandhar 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.

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

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

(a) 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, Ludhiana on each and every date of hearing.

(b) 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 Ludhiana in case the respondent opts to contest this petition.

9. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Jalandhar on 10.1.2023, it is directed that a copy of this order be sent to the respondent through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioner through her counsel, present in the Court, is directed to ensure her appearance accordingly.

Disposed of.

Pending application(s), if any, stands disposed of.

November 30,2022

Vijay Asija

**(NIDHI GUPTA)
JUDGE**

Whether speaking/reasoned

YES/NO

Whether Reportable

YES/NO