

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

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TA No.94 of 2023 (O&M)
Date of decision: 23.01.2023

Sanjeet @ Monu**...Petitioner(s)****vs****Smt. Sarita****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA****Present:-** Mr. Sumit Sangwan, Advocate for the petitioner.*********NIDHI GUPTA, J.(Oral)**

1. Prayer in this petition filed by petitioner husband is for transfer of the petition bearing No.GW/50/2019 filed by him under Sections 10 and 25 of the Guardians and Wards Act, 1890, titled “Sanjeet @ Monu vs. Smt. Sarita” pending in the Court of Principal Judge, Family Court, Jhajjar to a court of competent jurisdiction at Narnaul.

2. Learned counsel for the petitioner, inter alia, submits that:

i) that the parties were married on 08.02.2013 according to Hindu rites and rituals. However, vide judgment and decree dated 16.03.2020 (Annexure P3), they got divorce.

ii) that one son born out of the wedlock.

iii) that the respondent along with her minor son is living in Narnaul.

iv) that as per Section 9 of the Guardian and Wards Act, 1890, petitioner has to file the petition for custody where the minor resides.

v) that the petitioner has also lodged FIR No.246 dated 30.09.2016, under Sections 302, 323, 326, 452 and 506 IPC, at Police Station Salhawas, Jhajjar.

3. I have heard learned counsel for the petitioner.

4. The legal position in such like cases as the present one, is well established. As per Section 9 of the Guardians and Wards Act, 1890, petition for custody is required to be filed where the minor child ordinarily resides. In the present case, minor child is presently residing with the petitioner at Narnaul. Moreover, FIR against the respondent is also pending at Narnaul.

5. Moreover, in matters arising out of matrimonial discord, it has been very categorically laid down by the Hon'ble Supreme Court in **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha, 2022 Live Law (SC) 627**, 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. 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 and in view of the judgment **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 bearing No.GW/50/2019 filed by petitioner husband under Sections 10 and 25 of the Guardians and Wards Act, 1890, titled "Sanjeet @ Monu vs. Smt. Sarita" pending in the Court of Principal Judge, Family Court, Jhajjar is transferred to a court of competent jurisdiction at Narnaul.
- b) The Id. District Judge, Jhajjar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Narnaul.
- c) The parties are directed to appear before the District & Sessions Judge, Narnaul on 24.02.2023.
- d) The District Judge, Narnaul will assign the said petition to the Court of competent jurisdiction.

7. 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, Narnaul on 24.02.2023, it is directed that a copy of this order be sent to the respondent(s) through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioner through his counsel, present in the Court, is directed to ensure his appearance accordingly.

Disposed of.

23.01.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge