

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

TA No.175-2022 (O&M)
Date of decision: 18.01.2023

Indu Bala**...Petitioner(s)****Vs****Gaurav Sharma****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Sandeep Godara, Advocate for
Mr. A.P.S. Rehan, Advocate for the petitioner.

Mr. Varun Sharma, Advocate for the respondent.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of petition under Section 13 of the Hindu Marriage Act, 1955 bearing No.HMA-423-2021 titled "Gaurav Sharma vs. Indu Bala" pending at Family Court, Dera Bassi (District SAS Nagar), to a Court of competent jurisdiction at Mukerian (District Hoshiarpur).

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

- i) that the parties were married on 10.07.2019;
- ii) that no child was born out of the wedlock;
- iii) that the petitioner is living at Hoshiarpur;
- iv) that distance between place of residence and place of proceedings is about 230kms (one side);
- vi) that the petitioner has also filed petition under Section 125 Cr.P.C. at Mukerian, Hoshiarpur.

3. Learned counsel for the respondent has vehemently opposed prayer for transfer and inter alia submits that the petitioner has filed false complaint with the Women Cell, Dasuya wherein it has been alleged that her *istridhan* has not been returned. However, learned counsel refers to Annexure R1 Colly, which are photographs showing that the Istridhan articles have been received by the petitioner; and screenshot of payment of Rs.20,000/- deposited in the account of the petitioner on 13.08.2020. It is further submitted that distance between Talwara and Dera Bassi is 206 km and not 230 km. It is further submitted that the petition may be fixed before any Court of competent jurisdiction between Talwara and Dera Bassi.

4. I have heard learned counsel for the parties.

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 socio-economic 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, accordingly, 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 under Section 13 of the Hindu Marriage Act, 1955 bearing No.HMA-423-2021 titled "Gaurav Sharma vs. Indu Bala" pending in Family Court, Dera Bassi (District SAS Nagar), is transferred to a court of competent jurisdiction at Mukerian (District Hoshiarpur).

b) The learned District Judge, SAS Nagar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Hoshiarpur.

c) The parties are directed to appear before the District & Sessions Judge, Hoshiarpur on 28.02.2023.

d) The District Judge, Hoshiarpur will assign the said petition to the Court of competent jurisdiction.

9. The concerned Court at Hoshiarpur 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.

Present petition accordingly stands disposed of in above terms.

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

18.01.2023

Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No