

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

Transfer Application No. 230 of 2023

Date of decision: 22.02.2023

Amandeep Kaushal

.....Petitioner

vs

Bikramjeet Kumar and another

.....Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sunny K. Singla, Advocate
for the petitioner.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of Civil Suit bearing No.CS/1537/2021, titled as 'Bikramjeet Kumar vs. Amandeep Kaushal and another', filed by respondent No.1-husband seeking Declaration against the defendants (petitioner and respondent No.2 herein), who are living in adultery since the year 2020 and living as husband and wife in the eyes of society and on the other hand on 04.5.2020 defendants (petitioner and respondent No.2 herein) willfully created mental and physical cruelty by locking the main gate of their house by giving threatening; pending in the Court of learned Additional Civil Judge (Sr. Divn.), Bathinda to a Court of competent jurisdiction at Malerkotla.

2. Learned counsel for the petitioner submits :-

- i) That the petitioner and respondent No.1 were married on 19.10.2007 according to Hindu rites and rituals.

- ii) That two male children were born out of this wedlock, who are around 12-½ years and 5-½ years of age and are in the care and custody of the petitioner.
- iii) That the petitioner-wife is living separately from the respondent No.1-husband and living with her parents at their mercy at Malerkotla.
- iv) That the petitioner is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband, who is presently working as Nazari in the Court at Phul, District Bathinda, is not paying anything to her towards maintenance.
- v) The respondent No.1-husband has filed the Civil Suit (details of which is mentioned above in para 1 of the order), which is pending before the Additional Civil Judge (Sr. Divn.), Bathinda.
- vi) The proceedings arising out of petitions :-
 - (a) under Section 12 of the Protection of Women from Domestic Violence Act, 2005; and
 - (b) under Section 125 Cr.P.C. ;filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Malerkotla. It is submitted that the petition under Section 125 Cr.P.C. filed by the petitioner has already been allowed ex-parte on dated 07.2.2021. Thereafter, the respondent No.1-husband has challenged the ex-parte order dated 07.2.2021 and that matter is also pending consideration before the learned Court at Malerkotla. Both the parties are already facing proceedings before the Courts at Malerkotla.
- vii) That the distance between place of residence of the petitioner-wife i.e. Malerkotla and the place of proceedings of the Civil Suit (details given in para 1 of this order), filed by the respondent No.1-husband, pending

before the Additional Civil Judge (Sr. Divn.), Bathinda, is about 109 kilometers one side.

- viii) That there is no proficient male member in the family of petitioner who can accompany her to the Court of proceedings pending at Bathinda.
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.

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."

5. Further reliance can be placed upon the judgments in **"Sumita Singh vs Kumar Sanjay", 2002 SC 396** and **"Rajani Kishor Pardeshivs 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."

6. 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.

7. 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-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 Civil Suit bearing No.CS/1537/2021, titled as 'Bikramjeet Kumar vs. Amandeep Kaushal and another' (details mentioned in para 1 of this order), pending in the Court of learned Additional Civil Judge (Sr. Divn.), Bathinda, is transferred to a Court of competent jurisdiction at Malerkotla.
- b) The Id. District Judge, Bathinda is directed to transfer complete record pertaining to the aforesaid case to District Judge, Malerkotla.
- c) The parties are directed to appear before the District & Sessions Judge, Malerkotla on 31.3.2023.
- d) The District Judge, Malerkotla will assign the said Civil Suit to the Court of competent jurisdiction.

8. The concerned Court at Malerkotla 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.

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

10. I am supported by the 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.**

11. 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, Malerkotla on 31.3.2023, 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.

February 22, 2023
Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned	YES/NO
Whether Reportable	YES/NO