

TA-231-2023 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

TA-231-2023 (O&M)
Decided on: 22.11.2023

Jaswinder Kaur

...Applicant/Petitioner

Versus

Rajdeep Singh Sodhi

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Amandeep Singh, Advocate
for the Applicant/petitioner.

Mr. Sahej Mahajan, Advocate for the respondent.

SANJAY VASHISTH, J. (Oral)

1. Present transfer application, under Section 24 CPC, has been filed by the petitioner-wife, for seeking transfer of the petition, bearing No. HMA/56/2023, filed by the respondent-husband, under Section 9 of the Hindu Marriage Act, 1955, titled as “Rajdeep Singh Sodhi Vs. Jaswinder Kaur”, presently pending in the Court of Learned Additional Principal Judge, Family Court, Amritsar, to any Court of competent jurisdiction at Ludhiana.

2. The present transfer petition has been filed, *inter alia*, on the following grounds:-

- i) Petitioner-wife and respondent-husband got married on 16.01.2016, at Ludhiana, according to the Sikh rites and ceremonies, however, no child is born from the said wedlock.
- ii) Petitioner-wife has instituted a petition under Section 125 Cr.P.C. of the Hindu Marriage Act, in the Courts at Ludhiana

bearing No.MNT/125/2016. In March, 2016, respondent was proceeded against ex parte in the said proceedings. However, later on, the ex parte proceedings were set aside and petition was restored back to its original number. In the recent past, interim maintenance has been ordered to be paid to the petitioner by the respondent, but till date, no amount has been paid and the order of interim maintenance is applicable from the date of filing of the application filed under Section 125 Cr.P.C.

iv) Traveling from Ludhiana to Amrtisar, is a distance of around 140Km (one side), which takes around 2 hours, thus, causing extreme hardships to the petitioner-wife.

v) Petitioner-wife is not earning anything and financially dependent on her parents. Due to lack convenient transportation options, she is compelled to rely on public transport, resulting in significant hardships.

vi) Financial condition of the parental home of the petitioner-wife is also not sound, and her parental family lives in a hand to mouth condition.

3. On the other hand, Mr. Sahej Mahajan, Advocate, learned counsel for the respondent-husband vehemently argues that the petitioner-wife had left her matrimonial home on her own without any substantial cause and many requests had been made by the respondent-husband to the petitioner to join the matrimonial home again and to share all the responsibilities. He further submits that respondent is presently posted in a Bank at Gwalior. Counsel submits that the hearings are attended by his old aged father, and in case, the petition is transferred to the Courts at Ludhiana, it would be difficult for the old aged father to attend the proceedings on behalf of the respondent. Therefore, he opposed the prayer made in the present

application for transfer of case from Amritsar to Ludhiana.

4. I have heard learned counsel for the parties and gone through the material available on record.

5. In the facts and circumstances similar to the present case, in paragraph Nos. 9 & 10 of the judgment rendered in the case of N.C.V. Aishwarya v. A.S. Saravana Karthik Sha, AIR 2022 SC 4318, Hon'ble the Apex 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. Further, Hon'ble the Apex Court in Rajani Kishor Pradeshi v. Kishor Babulal Pardeshi, (2005) 12 SCC 237, 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 ordinary be allowed, taking into consideration their convenience and the Courts should

desist from putting female litigants under undue hardships.”

7. However, to avoid any misuse of the lenient view by the female litigants, Hon’ble the Apex Court in **Anindita Das v. Srijit Das, (2006) 9 SCC 197**, has also cautioned that the Courts should ensure that such leniency given to the female litigants should not be misused. Relevant Paragraph 3 of the aforesaid judgment says as under:

“3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency taken by this Court. On an average at least 10 to 15 transfer petitions are on Board of each Court on each admission day. It is, therefore, clear that leniency of this Court is being misused by the women.”

8. Thus, this Court is of the view that while adjudicating a transfer petition initiated by the wife in the context of a matrimonial dispute, the Court must take into account a comprehensive array of the following factors:-

- (a) Economic condition and earning capacity of the parties, i.e. husband and wife;
- (b) Social standing of the wife and her dependency on her parents;
- (c) Custody of any minor children involved;
- (d) Education of the children, if any;
- (e) Physical well-being of both, i.e. wife and husband;
- (f) Pending litigation(s) between the parties including criminal cases, if any;
- (g) Accessibility of the location from where the wife resides to the court where the case is pending;
- (h) Availability of convenient commuting options

Undoubtedly, only a harmonious consideration of all these vital aspects would ensure a just and equitable decision in such cases.

9. Considering the aforementioned settled proposition of law and facts of the present case, the submission made by learned counsel for the respondent is not tenable and the same is hereby rejected.

10. Thus, applying the principles of law, laid down by Hon'ble the Apex Court in N.C.V Aishwarya's case (supra), Rajani Kishor's case (supra) and Anindita Das's case (supra), this Court deems it appropriate to allow the present petition, by issuing following directions:

- (i) Petition filed by respondent - husband under Section 9 of the Hindu Marriage Act, 1955, bearing No. HMA/56/2023, titled as "Rajdeep Singh Sodhi Vs. Jaswinder Kaur", pending in the Court of Learned Additional Principal Judge, Family Court, Amritsar, is transferred to a Court of competent jurisdiction within Sessions Division Ludhiana.
- (ii) Learned District Judge, Amritsar, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Ludhiana, by directing both the sides to appear before the Court of learned District Judge, Ludhiana, on a particular date to be fixed by him, for further proceedings.
- (iii) On receipt of record of the case, learned District Judge, Ludhiana, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Ludhiana, to try the same.
- (iv) The concerned Court at Ludhiana, shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.
- (v) After transfer at Ludhiana, the concerned Court will accommodate the parties to the *lis* with at least one date in a

calendar month.

11. The present transfer application/petition is disposed. In order to ensure appearance of the parties before learned District Judge, Ludhiana as per the direction of learned District Judge, Amritsar, it is also directed that a copy of this order be sent to the respondent through registered post, besides sending copies of this order to learned District Judges concerned, through email as well.

Petitioner through her counsel, is also directed to ensure her appearance accordingly.

Petition stands **disposed of** in above terms.

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

(SANJAY VASHISTH)
JUDGE

22.11.2023
rashmi

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No