

TA-285-2023

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

206

TA-285-2023

Decided on: 23.11.2023

Rajni Devi

...Applicant/Petitioner

Versus

Gurmail Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Amarjit Beniwal, Advocate
for the Applicant/petitioner.

Ms. Vaishali Kamboj, Advocate for
Mr. R.S. Budhwar, Advocate 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/1253/2019, filed by the respondent–husband, under Section 13 of the Hindu Marriage Act, 1955, titled as “Gurmail Singh Vs. Rajni Devi”, presently pending in the Court of Learned Principal Judge, Family Court, Yamuna Nagar at Jagadhri, to any Court of competent jurisdiction at Gurugram.

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

i) Petitioner-wife and respondent-husband got married on

26.10.2008, at village Panjeton Ka Majra (Mandebri), Tehsil Jgadhri, District Yamuna Nagar, according to the Hindu rites and ceremonies.

- ii) Out of said wedlock, a female child was born, now aged 14 years, who is minor and staying/residing with the respondent.
- iii) Petitioner-wife has instituted a petition under Section 125 Cr.P.C., for seeking maintenance, which is pending adjudication in the Courts at Gurugram. Petitioner-wife also registered an FIR No.1019 dated 02.12.2021, under Sections 323, 498-A IPC against the respondent and his family members, which is also pending in the Courts at Gurugram.
- iv) Petitioner-wife is not earning anything, while respondent husband is working in a Private Company Hero Moto Corp at Gurugram. The said fact is also mentioned in the divorce petition. Just to harass petitioner-wife, respondent filed divorce petition in the Courts at Yamunanagar.
- v) Traveling from Gurugram to Yamunanagr at Jagadhri, is a distance of around 220 Km (one side), which takes around 4 hours, thus, causing extreme hardships to the petitioner-wife
- vi) Petitioner-wife is not earning anything and due to lack of convenient transportation options, she is compelled to rely on public transport, resulting in significant hardships.
- vii) Financial condition of the petitioner-wife is also not sound, and she lives in a hand to mouth condition.

3. On the other hand, Ms. Vaishali Kamboj, learned counsel for the respondent-husband vehemently argues that the minor daughter, who is aged about 14 years, is residing with the respondent-husband and he is looking after her day to day needs, apart from education. Therefore, he opposed the prayer made in the present application for transfer of case from Yamuna

Nagar to Gurugram.

However, on a specific query by this Court that respondent-husband is admittedly working in Hero Moto Corp. Company at Gurugram, then why he filed the divorce petition at Yamuna Nagar, learned counsel for the respondent has not been able to give any satisfactory reply.

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 ordinarily 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 13 of the Hindu Marriage Act, 1955, bearing No. HMA/1253/2019, titled as "Gurmail Singh Vs. Rajni Devi", pending in the Court of Learned Principal Judge, Family Court, Yamuna Nagar at Jagadhri, is transferred to a Court of competent jurisdiction within Sessions Division Gurugram.
- (ii) Learned District Judge, Yamuna Nagar at Jagadhri, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Gurugram, by directing both the sides to appear before the Court of learned District Judge, Gurugram, on a particular date to be fixed by him, for further proceedings.
- (iii) On receipt of record of the case, learned District Judge, Gurugram, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within

Sessions Division Gurugram, to try the same.

- (iv) The concerned Court at Gurugram, 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 Gurugram, the concerned Court will accommodate the parties to the *lis* with at least one date in a calendar month.

11. For compliance of the order passed by this Court Registry is directed to transmit copies of this order forthwith to learned District Judge, Yamuna Nagar at Jagadhri and learned District Judge, Gurugram, through email(s) 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

23.11.2023

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