

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

CRM-M-13297-2023

Date of Decision: August 22, 2023

Neha

... Petitioner

Versus

Gagan Gupta

... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. S.S. Sahu, Advocate,
for the petitioner.

Mr. Arman Goyal, Advocate,
for the respondent.

Vivek Puri, J.

1. The petitioner is seeking to transfer the petition bearing No. MTN/125/13/2023 titled as "Gagan Gupta vs. Neha" for grant of maintenance under Section 125 of the Code of Criminal Procedure (for short 'Cr.P.C.') pending in the Court of learned Principal Judge Family Court, Jind to District Court, Fatehabad.

2. The marriage of the petitioner was solemnized with the respondent on 18.04.2018 at Jind and a daughter, who is stated to be aged about 4 years at present, has been born from the wedlock. The respondent has instituted a petition under Section 125 Cr.P.C. against the petitioner in the learned Family Court, Jind. The petitioner has lodged an

FIR bearing No. 287, dated 26.06.2022, under Sections 323, 34, 498-A, 506 of the Indian Penal Code (for short 'IPC'), registered at Police Station City Tohana, District Fatehabad, wherein after the completion of the investigation, the trial is pending in the concerned Court at Tohana, District Fatehabad. Besides, the respondent has instituted a petition under Section 25 of the Guardian and Wards Act, which is pending in the learned Family Court, Fatehabad (Camp at Tohana). The petitioner and her minor daughter Krishna are living at the mercy of her parents in her parental house. The minor daughter is residing with the petitioner and the respondent is not ready to pay maintenance to them. The distance between Fatehabad and Jind is more than 100 kms. Accordingly, transfer of the petition under Section 125 Cr.P.C. from District Jind to District Fatehabad has been sought.

3. Short affidavit filed on behalf of the respondent is taken on record, wherein the details of pending cases between the parties have been reflected.

4. I have heard learned counsel for the parties and perused the record.

5. Learned counsel for the petitioner contends that the petition under Section 125 Cr.P.c. which otherwise may not be maintainable at the instance of the respondent has been instituted at Jind with a mala fide intention to harass

the petitioner. Two other cases instituted between the parties are already pending in the Courts at Tohana, District Fatehabad. The daughter aged about 4 years is residing with the petitioner in her parental house. The parents of the petitioner are looking after both of them and the respondent is not providing any maintenance to them. The convenience of the wife is required to be looked into while considering the transfer of a case and in this regard, reference has been made to the decision rendered in **Civil Appeal No. 5218 of 2022 titled "Ruchi Rawat vs. Principal Judge, Family Court Etah and another", decided on 05.08.2022 (S.C.), N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha, 2022, AIR (Supreme Court) 4318 and Sumita Singh vs. Kumar Sanjay and another, 2001 (10) SCC 41.**

6. On the contrary, the learned counsel for the respondent submits that 3 other cases between the parties are pending in the Court at Jind. Furthermore, the petitioner is earning Rs. 72,000/- per month. The petitioner can conveniently defend the petition under Section 125 Cr.P.C. in the Court at Jind as 3 other cases are pending there.

7. The relationship between the parties has not been disputed. Admittedly, the marriage of the petitioner was solemnized with the respondent and a daughter has been born from the wedlock. The matrimonial dispute has

cropped up between the parties and they are residing separate from each other. The petitioner along with 4 years old daughter is presently residing in her parental house at Fatehabad. Her matrimonial house is situated in Jind. The distance between Fatehabad and Jind is stated to be about 100 kms.

8. The petitioner has lodged an FIR bearing No. 287 dated 26.06.2022, under Sections 323, 34, 498-A, 506 IPC, registered at Police Station City Tohana, District Fatehabad against the respondent. The trial of the said case is stated to be pending in the Court of learned Judicial Magistrate, Tohana, District Fatehabad. Besides, the respondent has instituted a petition under Section 25 of the Guardian and Wards Act for custody of the minor child and the same is stated to be pending in the learned Family Court, Fatehabad (camp at Tohana). It has been pointed out on behalf of the respondent that he has instituted a petition under Section 9 of the Hindu Marriage Act which is pending in the learned Family Court at Jind. Besides Vimla Gupta, a relative of the respondent has initiated the proceedings under Protection of Women from Domestic Violence Act against the petitioner and a criminal complaint instituted by Janinder Kumar against the petitioner and the said cases are stated to be pending in the Courts at Jind.

9. Merely because some cases instituted by the respondent and his family members are pending at Jind cannot be termed to be a circumstance to decline the request for transfer of the petition under Section 125 Cr.P.C. It is significant to note that two cases *inter se* between the parties are pending in the Courts at Tohana. In matrimonial matters, the convenience of the wife is also required to be looked into while deciding the transfer application. The economic soundness, social strata of the spouses, antecedents and other circumstances are required to be looked into and considered while adjudicating such controversy.

10. The petitioner has put forth a specific and categorical case that she along with 4 years daughter is residing in her parental house in District Fatehabad and the respondent is not providing any maintenance to them. The distance between Fatehabad and Jind is stated to be around 100 Kms. Moreover, 2 other cases are already pending in the Courts at Tohana, District Fatehabad. As such, the ends of justice will meet, in the event, the petition under Section 125 Cr.P.C. instituted by the respondent against the petitioner is transferred to the Court at Tohana, District Fatehabad.

11. Resultantly, instant petition is allowed and it is directed that the petition bearing No. MTN/125/13/2023

titled as “Gagan Gupta vs. Neha” for grant of maintenance under Section 125 of the Code of Criminal Procedure pending in the Court of learned Principal Judge Family Court, Jind to the Family Court, Fatehabad (camp at Tohana) for disposal in accordance with law. The learned Family Court, Jind shall forthwith transmit the record of the case to the transferee Court.

August 22, 2023

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(Vivek Puri)
Judge

Whether reportable : Yes/No
Whether speaking/reasoned : Yes/No