

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

Transfer Application No. 333 of 2023

Date of decision :-24.04.2023

Nisha

.....Petitioner

vs

Jagdeep Kumar

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Gurinder Singh Brar, Advocate
for the petitioner.

None for the respondent despite service.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 13(i)(a) of the Hindu Marriage Act,1955 (for short 'the Act') titled 'Jagdeep Kumar vs. Nisha' pending in the Court of Principal Judge, Family Court, Bathinda to a Court of competent jurisdiction at Sri Muktsar Sahib.

As per office report dated 21.4.2023, notice issued to the respondent has been received back served, however, there is no representation on behalf of respondent. Accordingly, this petition is being decided in his absence.

2. Learned counsel for the petitioner has contended :-

- i) That the parties were married on 12.4.2019 according to Hindu rites and rituals.
- ii) That a male child was born out of this wedlock on 06.3.2020, who is in the care and custody of the petitioner.

- iii) That the petitioner-wife is living separately from the respondent-husband and living with her parents at their mercy at Sri Muktsar Sahib.
 - iv) That the petitioner is unemployed, having no source of income and totally dependent upon her parents and the respondent-husband is not paying anything to her towards maintenance.
 - v) That the proceedings arising out of petition under Section 125 Cr.P.C. filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Sri Muktsar Sahib. It is submitted by learned counsel for the petitioner that the petition under Section 125 Cr.P.C. was filed after filing of the present petition, therefore, reference of the same could not have been mentioned in the petition. He further submits that the said petition under Section 125 Cr.P.C. is pending for hearing before the Family Court, Sri Muktsar Sahib, for 24.5.2023.
 - vi) That the distance between place of residence of the petitioner-wife i.e. Sri Muktsar Sahib and the place of proceedings under Section 13(i)(a) of the Act, filed by the respondent-husband, pending before the Principal Judge, Family Court, Bathinda, is about 54 kilometers on one side.
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.
5. Besides the facts as noticed hereinabove, 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**, 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.”

6. 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.”

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. In view of the facts mentioned above and 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 filed by respondent husband under Section 13(i)(a) of Act, bearing No. DMC/116/2023 titled as 'Jagdeep Kumar vs. Nisha', pending in the Court of Principal Judge, Family Court, Bathinda is transferred to a Court of competent jurisdiction at Sri Muktsar Sahib.
- b) The Id. District Judge, Bathinda is directed to transfer complete record pertaining to the aforesaid case to District Judge, Sri Muktsar Sahib.
- c) The parties are directed to appear before the District & Sessions Judge, Sri Muktsar Sahib on 22.5.2023.
- d) The District Judge, Sri Muktsar Sahib will assign the said petition to the Court of competent jurisdiction.

9. The concerned Court at Sri Muktsar Sahib 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 is pending between the parties, will accommodate them with one date in one calendar month.

11. 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**.

Disposed of.

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

April 24, 2023
Vijay Asija

(NIDHI GUPTA)
JUDGE

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