

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

225

CRM-M-21108-2022

Date of Decision: 11.01.2023

Babita

..... Petitioner

Versus

Naveen and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Ms. Aashna Gill, Advocate
for the petitioner.

Mr. R.S. Malik, Advocate
for the respondents.

JAGMOHAN BANSAL, J. (Oral)

The petitioner through instant petition under Section 407 read with Section 482 of Cr.P.C. is seeking transfer of petition under Section 12 of Protection of Women from Domestic Violence Act, 2005 bearing No.COMA/1/2022 (Annexure P-1) instituted on 07.01.2022 titled 'Babita Vs Naveen and others' from the court of Ld. Judicial Magistrate of First Class, Sonipat to the Court of competent jurisdiction at Panchkula.

Learned counsel for the petitioner, at the outset, submits that the petitioner had filed TA No.440 of 2022 seeking transfer of divorce petition filed under Section 13 of Hindu Marriage Act from Sonipat to Panchkula and the said petition stands allowed vide order dated 15.07.2022 passed by a Co-ordinate Bench of this Court.

Learned counsel for the respondent fairly concedes that the order dated 15.07.2022 passed by a Co-ordinate Bench of this Court in TA No.440 of 2022 has not been challenged and proceedings qua petition

under Section 13 of Hindu Marriage Act stand transferred to Panchkula from Sonapat.

The relevant extracts of order dated 15.07.2022 passed by a Co-ordinate Bench of this Court read as :

“Learned counsel for the petitioner submits that the petitioner is presently serving at Panchkula and she has a minor daughter, who is living in her care and custody at Panchkula.

Learned counsel further submits that it is very difficult for the petitioner to contest the case at Sonipat as no maintenance qua the minor child is being paid by the respondent-husband.

Learned counsel has relied upon the judgments Sumita Singh Vs. Kumar Sanjay, 2002 SC 396 and Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi, 2005(12) SCC 237, wherein the Hon’ble Supreme Court 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.”

Learned counsel for the respondent-husband submits that at the instance of the petitioner, two FIRs have been registered against the respondent-husband and his family members, out of which, one FIR stands cancelled and in the second FIR, except the respondent-husband, the other family members have been exonerated and the respondent is facing trial.

It is further submitted that the petitioner is serving as Head Constable in Haryana Police and that is why she has involved the respondent in unnecessary litigation.

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 family condition of the wife, custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important, 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.

After hearing the counsel for the parties, considering the fact that if the aforesaid petition is not transferred, the petitioner-wife, who is living at Panchkula along with her minor daughter, will have to bear the litigation expenses and transportation expenses and also in view of the ratio of law laid down by Hon'ble Supreme Court in Sumita Singh's case (supra) and Rajani Kishor Pardeshi's case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

- (i) The petition filed under Section 13 of the Hindu Marriage Act, pending before the Addl. Principal Judge, Family Court, Sonipat will be transferred to the competent Court of jurisdiction at Panchkula.*
- (ii) The District Judge, Panchkula will assign the said petition to the competent*

Court of jurisdiction.

- (iii) The Family Court at Sonipat is directed to transfer all the record pertaining to the aforesaid case to District Judge, Panchkula.*
- (iv) The parties are directed to appear before the trial Court at Panchkula within a period of 01 month from today.”*

In view of aforesaid order passed by a Co-ordinate Bench of this Court, the present petition is allowed with following directions :-

- (i) The petition bearing No.COMA/1/2022 (Annexure P-1) filed under Section 12 of Protection of Women from Domestic Violence Act, 2005, pending before the JMIC, Sonipat is ordered to be transferred to the competent Court of jurisdiction at Panchkula.
- (ii) The District Judge, Panchkula will assign the said petition to the competent Court of jurisdiction.
- (iii) The JMIC, Sonipat is directed to transfer record pertaining to the aforesaid case to District Judge, Panchkula.
- (iv) The parties are directed to appear before the trial Court at Panchkula on 01.02.2023 at the first instance and thereafter as directed by said Court.

(JAGMOHAN BANSAL)
JUDGE

11.01.2023
anju

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