IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Transfer Application No. 613 of 2023
Date of decision: 11.05.2023

Monika

…….Petitioner

vs

Puneet Chandel

……..Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Pratula Sethi, Advocate
for the petitioner.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband seeking divorce, titled as 'Puneet Chandel vs. Monika', pending in the Court of Principal Judge, Family Court, Pathankot to a Court of competent jurisdiction at Ludhiana.

2. Learned counsel for the petitioner submits :-

i) That the parties were married on 05.12.2014 according to Hindu rites and rituals.

ii) That a male child was born out of this wedlock, 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 Ludhiana.

iv) That the petitioner is unemployed, having no source of income and totally dependent upon her parents and the

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respondent-husband is not paying anything to her towards maintenance.

v) That the proceedings arising out of petitions :-

(a) under Section 125 Cr.P.C. (MNT-125/2128/2019);

(b) Execution petitions of Section 125 Cr.P.C. (CRM-1308-2021, CRM-1779-2022 and CRM-962-2023); and

(c) Petition under Section 406 and 498-A IPC (CHI/39727/2022),

filed by the petitioner-wife, are pending in the Courts having competent jurisdiction at Ludhiana. It is submitted that earlier a petition under Section 9 of the Hindu Marriage Act bearing HMA/9654/2022, filed by the respondent in the Court at Pathankot has been transferred to Ludhiana vide order dated 07.9.2022 passed by this Court in TA-208-2020 and subsequently, the petition was withdrawan by the respondent.

vi) That the distance between place of residence of the petitioner-wife i.e. Ludhiana and the place of proceedings of the petition, which is subject matter of transfer in the present petition, filed by the respondent-husband, pending before the Principal Judge, Family Court, Pathankot, is about 173 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:-

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> "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

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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. After going through the entire paper-book, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner-wife will have to bear the litigation expenses and transportation expenses and in case, notice of motion is issued, even the respondent-husband has to bear the litigation expenses and in view of 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 divorce petition filed by respondent husband which is subject matter for transfer in the present petition, bearing No. HMA/99/2023, titled as 'Puneet Chandel Vs. Monika', pending in the Court of Principal Judge, Family Court, Pathankot is transferred to a Court of competent jurisdiction at Ludhiana.

b) The ld. District Judge, Pathankot is directed to transfer complete record pertaining to the aforesaid case to District Judge, Ludhiana.

c) The parties are directed to appear before the District & Sessions Judge, Ludhiana on 14.6.2023.

d) The District Judge, Ludhiana will assign the said petition to the Court of competent jurisdiction.

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9. The concerned Court at Ludhiana 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. However, liberty is granted to the respondent to revive this petition, if he intends to contest the same, provided that:-

(a) The respondent will clear all arrears of maintenance amount, if any, in terms of any petition filed by the petitioner either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.

(b) The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at District Courts, Pathankot on each and every date of hearing.

(c) The respondent will bring a demand draft of Rs.25,000/-, drawn in favour of petitioner, towards the litigation expenses to pursue the case at District Pathankot in case the respondent opts to contest this petition.

12. 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.**

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13. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Ludhiana on 14.6.2023, it is directed that a copy of this order be sent to the respondent through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioner through her counsel, present in the Court, is directed to ensure her appearance accordingly.

Disposed of.

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

May 11, 2023 **(NIDHI GUPTA)**
Vijay Asija **JUDGE**

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

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