

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

217-II

Criminal Misc. No. M-30253 of 2022

Date of decision :-03.10.2023

Ashwani Kumar

.....Petitioner

Versus

Kulwant Kaur and others

.....Respondents

CORAM:- HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikas Bali, Advocate
for the petitioner.

Mr. Arun Takhi, Advocate
For respondent No.1.

NIDHI GUPTA J. (Oral)

1. Prayer in this petition filed by petitioner-husband is for transfer of the petition bearing No.COMA/47/2022, under Section 12 of Protection of Women from Domestic Violence Act filed by the wife/respondent No.1 herein, instituted on 05.5.2022 (Annexure P-3) titled as 'Kulwant Kaur vs. Ashwani Kumar and others', pending in the Court of learned Judicial Magistrate 1st Class, Hoshiarpur to the Court of competent jurisdiction at Jalandhar.

2. Mr. Arun Takhi, Advocate has put in appearance on behalf of respondent No.1-wife and filed his Power of Attorney, which is taken on record.

3. Learned counsel for the petitioner, inter alia, submits that:

i) that the parties solemnized marriage on 16.5.2013.

- ii) that two male children were born out of the wedlock on 05.9.2017 and 26.6.2019 respectively, who are in the care and custody of parents of respondent No.1.
- iii) that the petitioner is residing at Mohali and praying for transfer of the petition (aforementioned) from Hoshiarpur to Jalandhar, where respondent No.1, who is working as Head Constable and posted in CRPF, Jalandhar; used to live at Quarter No.377, Type-2, CRPF Campus, Sarai Khas, Sub Tehsil Kartarpur, District Jalandhar, and it would be for her convenience to attend the Court proceedings there.
- iv) That the respondent No.1-wife after separation from the petitioner-husband, on the instigation of her parents, who used to live at Hoshiarpur, has filed the petitions under Section 125 Cr.P.C. and under the DV Act through her parents at Hoshiarpur as presently respondent No.1-wife is posted in CRPF at Jammu and Kashmir.
- v) Vide order dated 26.7.2023, passed by this Court, the parties were directed to appear before the Mediation and Conciliation Center of this Court but the respondent No.1-wife never came present for mediation proceedings, therefore, the mediation could not succeed.

4. Learned counsel for respondent No.1-wife by controverting the contentions of learned counsel for the petitioner-husband submits that the respondent No.1-wife is presently posted in CRPF at Jammu and Kashmir. She has filed the petitions under Section 125 Cr.P.C. and DV Act against the petitioner-husband at Hoshiarpur through her parents at her parental town, where her parents used to live and maintain both the children. Because of old

age, her parents are not in a position to move to another city for attending the Court proceedings. Learned counsel has referred to the order dated 25.7.2022 passed by co-ordinate Bench of this Court in TA-741-2022, whereby the petition filed by the husband under Sections 7 and 25 of the Guardians and Wards Act, 1890, pending before the Family Court, Jalandhar was ordered to be transferred to the competent Court of jurisdiction at Hoshiarpur. It is further submitted that the respondent No.1-wife is a working lady; presently posted in CRPF at Jammu and Kashmir and proceedings in all the three cases i.e. under Section 125 Cr.P.C., DV Act and Guardianship and Wards Act are going on at Hoshiarpur, where, she is attending the proceedings through her parents and even after transfer of the petition under the Guardianship and Wards Act at Hoshiarpur, the petitioner-husband is also attending the proceedings there. Learned counsel further submits that the petitioner-husband in connection with his job is living at Mohali and originally he is resident of Ward No.3, Tikka Kanialkar, VPO Lower Khaira, Tehsil Palampur Kanialkar (551), Kangra, Himachal Pradesh-176086.

5. I have heard learned counsel for the parties and gone through the case file carefully.

6. 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.”

7. 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.”

8. 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

importantly 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.

9. In view of the above, since the proceedings in all the three cases i.e. under Section 125 Cr.P.C., DV Act and Guardianship and Wards Act are going on at the Court(s) at Hoshiarpur and not even a single case is pending at Jalandhar coupled with the fact that the respondent No.1-wife is not residing at Jalandhar, rather she is posted in CRPF at Jammu and Kashmir and is attending the proceedings through her parents at Hoshiarpur, I find no reason to interfere in the proceedings.

10. Consequently, the present petition is dismissed.

October 03, 2023

Vijay Asija

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No