

CRM-M-36191 of 2022

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**In the High Court of Punjab and Haryana at Chandigarh
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CRM-M-36191 of 2022

Date of Decision: 13.04.2023

Pushpa Devi and others

---Petitioners

versus

Kamlesh

---Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Vishwajeet Singh, Advocate
for the petitioners

Mr. Bhisham Kumar Masoka, Advocate
for the respondent

JAGMOHAN BANSAL, J. (ORAL)

Through instant petition under Section 407 Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') read with Section 482 Cr.P.C, the petitioners are seeking transfer of petition bearing No.COMA-25/2020; titled as "Kamlesh Versus Smt. Pushpa and Others" (Annexure P-1) filed under Section 12 of Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act') along with all subsequent proceedings arising therefrom from District Palwal to District Gurugram.

Learned counsel for the petitioners inter alia contends that respondent has preferred petition bearing No.COMA-25/2020

titled as Kamlesh Versus Smt. Pushpa and Others (Annexure P-1) under Section 12 of DV Act. The petition has been filed by mother-in-law of petitioner No.1. The husband of petitioner No.1 had filed petition under Section 13 of Hindu Marriage Act, 1955 (for short 'HMA') before Family Court, Palwal which stands transferred to District Gurugram vide order dated 25.07.2022 (Annexure P-3) passed by this Court in TA-746-2022. He further submits that petitioner had filed a petition under Section 125 Cr.P.C. before District Court, Palwal and it stands transferred to Gurugram vide order dated 14.09.2022 passed by this Court in CRM-M-33652-2022. The husband of petitioner No.1 has filed petition under Section 6 of Hindu Minority and Guardianship Act, 1956 (for short '1956 Act') seeking custody of child before Family Court, Gurugram. In this way, three matters under different enactments are pending at Gurugram between the same parties, thus, present petition deserves to be transferred from District Palwal to District Gurugram.

Per contra, Mr. Bhisham Kumar Masoka, Advocate submitted that petition under Section 12 of DV Act has been filed by respondent i.e. mother-in-law against the petitioner. She has also lodged an FIR against the petitioner at Palwal, thus, present petition deserves to be dismissed.

A Co-ordinate Bench of this Court while passing order of transfer of petition filed under Section 125 Cr.P.C. has held:-

*“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.

The convenience of the wife is always a significant factor to be looked into in such like disputes. Furthermore, it will be appropriate that the present case is also transferred to the Court at Gurugram particularly because the petition under Section 13 of Hindu Marriage Act and the petition under Section 6 of Hindu Minority and Guardianship Act instituted by the respondent are also pending in the Courts at Gurugram. In these set of circumstances, the present petition is allowed and the aforesaid petition under Section 125 of the Code titled as "Smt. Pushpa and another Versus Parvesh Kumar" bearing MNT No.169/2021 is transferred from the Family Court at Palwal to the Family Court at Gurugram.

Learned Family Court at Palwal is

directed to send the record of the case to the learned Family Court at Gurugram forthwith and the petitioner is directed to appear before the Family Court, Gurugram within a period of 01 month from today.”

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

In view of facts and circumstances of the present case as well as factum of three more pending cases at Gurugram, the present petition deserves to be allowed and accordingly allowed with following directions :-

- (i) The Case No. COMA-25/2020; titled as “Kamlesh Versus Smt. Pushpa and Others” (Annexure P-1) filed under Section 12 of DV Act, pending in the Court of Illaqa Magistrate, Palwal, is ordered to be transferred to the competent Court of jurisdiction at Gurugram
- (ii) The Illaqa Magistrate, Palwal, is directed to transfer record pertaining to the aforesaid case to District and Sessions Judge, Gurugram.
- (iii) The District and Sessions Judge, Gurugram will assign the said petition to the competent Court of jurisdiction.
- (iv) The parties are directed to appear before the District and Sessions Judge, Gurugram on

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27.04.2023 at the first instance and thereafter as
directed by said Court.

(JAGMOHAN BANSAL)
JUDGE

13.4.2023

paramjit

Whether speaking/reasoned : Yes

Whether reportable : Yes/No