

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA 930/2022

Date of decision: 30.05.2023

Santosh Sharma

.....Petitioner

Vs.

Shivraj Sharma

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sandeep Punchhi, Advocate for the petitioner.
Mr. Surinder Gandhi, Advocate for the respondent.

Nidhi Gupta, J.

By way of this petition u/s 24 read with Section 151 Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') read with Section 21 of the Hindu Marriage Act, 1955 (for short the Act) petitioner-wife seeks transfer of petition u/s 13 of the Act filed by the respondent-husband, titled 'Shivraj Sharma v Santosh Sharma' bearing DMC/304/2022 dated 26.4.2022 (Annexure P-3) from the Court of Addl. Principal Judge, Family Court, Panipat to a court of competent jurisdiction/Family Court at Sirsa.

2. It is the case of the petitioner that marriage between the parties was solemnized on 1.3.2004 according to Hindu rites and ceremonies at Sirsa. From this wedlock one son Anshul was born on 5.9.2006, and one daughter Preetika was born on 7.4.2009. It is alleged by the petitioner that right from the day of marriage she was being harassed by the respondent and his family members and was ousted from the matrimonial home many times

but her parents used to reconcile the matter by convening panchayats. It is further alleged that due to unnatural sex committed by the respondent she had to undergo operation at Narayan Dutt Hospital, Panipat whereafter her brothers took petitioner back to her matrimonial home at Sirsa. According to the petitioner respondent has forcibly retained the custody of the minor children with him and has now filed a petition u/s 13 of the Act at Panipat by making false allegations. According to the petitioner the respondent-husband has filed the aforesaid petition at Panipat as a counter blast to the following proceedings initiated by the petitioner: -

(i) FIR No.0442 dated 7.11.2021 under Sections 323,34,377,406 and 498A IPC, PS Civil Lines, Sirsa (Annexure P-1);

(ii) Petition u/s 125 Cr.PC filed by the petitioner before Family Court, Sirsa; and

(iii) Petition u/s 12, 17,18,19,20,22 and 23 of the Protection of Women from Domestic Violence Act pending before Principal Judge, Family Court at Sirsa(Annexure P-2).

3. In this factual backdrop, Id. Counsel for the petitioner seeks transfer of the petition u/s 13 of the Act inter-alia, on the grounds that:-

(i) petitioner is a lady, and it would be very difficult for her to travel down to Panipat along with her mother/relatives as distance between Sirsa and Panipat is 220 kilometers. Father of the petitioner has also expired.

(ii) respondent is already attending to the proceedings, mentioned in para 2 above, initiated by the petitioner at Sirsa.

4. Upon notice, reply has been filed on behalf of the respondent-husband. It is averred therein that a simple marriage between the parties was solemnized at Dera Sacha Sauda, Sirsa. The allegations of harassment of petitioner for want of dowry are denied. It is further stated that the petitioner left matrimonial home at her own sweet will by disrespecting the family tradition of the respondent and the efforts for an amicable settlement of the matrimonial dispute before Police/Mediator of this Court, could not materialize due to adamant behaviour of the petitioner as she is being instigated by her brothers. It is further alleged that petitioner is entirely devoted to the Dera and residing at Sirsa and being a healthy lady can easily travel between Sirsa and Panipat and that she need not come to Panipat on each and every date as she is being represented by her counsel.

5. It is further submitted by learned counsel for the respondent that, the respondent is single-handedly looking after both the children while the petitioner is involved in the activities of the Dera. It is submitted that the respondent has to work to provide for the day-to-day life-amenities for the children, for their education, as also for their future security and well-being. It is submitted that simultaneously the respondent also has to ensure their mental and physical well-being, especially in view of the fact that their mother has deserted them. It is submitted that accordingly, in the face of all these myriad responsibilities, it is very difficult for the respondent to travel from time to time to attend to the various litigations maliciously instigated by the petitioner. As such, it is prayed that the present transfer petition be dismissed.

6. Heard ld. counsel for the parties.

7. I find merit in the submissions advanced on behalf of the respondent. This Court is well aware of the fact that the preponderance of law, in cases of transfer emanating from matrimonial disputes, is in favour of the wife. However, Id. Counsel for the petitioner is unable to controvert the above facts canvassed on behalf of the respondent. It is not disputed by the Id. counsel for the petitioner that the minor children of the parties are residing with the respondent husband and as such, he has to take care of them. It has even been admitted at bar that the petitioner has not filed any petition under the Guardians and Wards Act, 1890 seeking custody of the children. As such, in view of the above noted facts and circumstances of the present case, wherefrom it is clear that it is the respondent who is solely responsible for the complete welfare of the minor children who are in his care and custody, it will be in my considered view, an imprudent exercise of judicial discretion to allow the present petition. On the other hand, the petitioner has been unable to show as to why she is unable to travel. Whereas, it is not in dispute that the respondent is working, and he has the added responsibility of looking after the daily needs as well as provide all emotional and mental support to the children who are in his care and custody.

8. Moreover, it is not the case that transfer is always allowed in favour of the wife. The Hon'ble Supreme Court, as well as this Court have refused relief to the wife in much less strenuous circumstances. Reliance in this regard is being placed upon judgment of the Hon'ble Supreme Court in **Anindita Das v. Srijit Das**, (SC) : Law Finder Doc Id # 191193 and judgments of this Court in **Nisha @ Manisha v Amarveer Yadav**, (TA No.299/2019 decided on 15.1.2020); and **Rinky Rani v Daljit Kumar**, Law Finder Doc Id # 1975389 holding that leniency shown to ladies in such transfer

matters is often misused and that Courts should not be swayed by emotions merely because applicant is a wife.

9. In view of aforesaid factual and legal position, finding no merit in this petition, the same is hereby **dismissed**.

30.05.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No