

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA 933/2022

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') petitioner wife seeks transfer of petition u/s **10 and 25 of the Guardian and Wards Act read with Section 6 of the Hindu Minority and Guardianship Act, 1890** (for short the '1890 Act') filed by the respondent, titled 'Shivraj Sharma v Santosh Sharma' bearing GW/29/2022 dated 26.4.2022 from the Court of Addl. Principal Judge, Family Court, Panipat to a court of competent jurisdiction/family court at Sirsa. By way of the above said petition the respondent is seeking custody of the minor children born out of the wedlock of the parties.

2. It is 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 son Anshul was born on 5.9.2006 and 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 **10 and 25 read with Section 6** of the 1890 Act against the petitioner for custody of minor children at Family Court, 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. It is further the case of the petitioner wife that respondent has also filed a divorce petition at Panipat for which she is filing a separate Transfer Application. It is also alleged by the petitioner that respondent has filed the petition u/s **10 and 25 read with Section 6** of the Guardian and Wards Act with false allegations in order to get custody of the children and not to pay the maintenance.

4. In this factual backdrop, it is submitted by learned Counsel for the petitioner that transfer of the petition u/s **10 and 25 read with Section**

6 of the 1890 Act be allowed inter-alia, in view of the submissions made here in above, and 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.

5. 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.

6. 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.

7. Heard ld. counsel for the parties.

8. 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, ld. Counsel for the petitioner is unable to controvert the above facts canvassed on behalf of the respondent. It is not disputed by the ld. 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 Guardian 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. Moreover, I find that petitioner has been unable to show any valid reasons for being unable to travel.

9. Besides the above facts, the legal position in such like cases as the present one, is well established.

10. As per Section 9 of the Guardians and Wards Act, 1890, petition for custody of minor child, is required to be filed where the minor child ordinarily resides. In the present case, minor children are admittedly residing with the respondent at Panipat. This factual as well as legal position is not disputed by the Id. counsel for the petitioner.

11. In view of the 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
Whether reportable

Yes
Yes/No