

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

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CRM-M-49478-2021 (O&M)**Date of decision: 22.11.2023****Charu Mahajan****...Petitioner****Versus****Sumit Mahajan & others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Nitesh Singhi, Advocate
for the petitioner.

None for the respondents.

MANISHA BATRA, J. (Oral)**1. CRM-48953-2023**

Prayer in this application is for taking up the main case in the urgent list, which is fixed for today itself in the ordinary list.

2. For the reasons stated in the application, the same is allowed.

Let the main case be taken up in the urgent list.

3. CRM-M-49478-2021 (O&M)

The present petition has been filed under Section 407 read with Section 482 of Cr.P.C. by the petitioner seeking transfer of petition/case (COMA) No. 30441/2019, filing No. 4216 of 2019, filed by the petitioner under Sections 12, 17, 18, 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (for short 'DV Act'), titled as Charu Mahajan vs. Sumit Mahajan & others, from the Court of Judicial Magistrate First Class, Ludhiana to the competent Court of jurisdiction at Chandigarh.

4. Brief facts of the case relevant for the purpose of disposal of the present case are that the petitioner was married to respondent No. 1 on

10.01.2008 at Banglore as per Hindu rites and rituals. They lived and cohabited for two years in Banglore and thereafter at Ludhiana since 13.10.2019. However, due to some matrimonial discord, the petitioner left her matrimonial home along with her minor son on 13.10.2019. Due to ill treatment and harassment caused by respondent No. 1 and his family members to the petitioner, she got registered FIR No. 45, dated 30.07.2021, under Sections 406, 498-A of the IPC at Police Station Women, Chandigarh. The respondent No. 1 had also filed a petition under Sections 6 read with Section 25 of the Guardians & Wards Act, 1819, titled as “***Sumit Mahajan vs. Charu Mahajan***” before the Family Court, Ludhiana seeking custody of the minor child. However, the petitioner filed a petition, bearing ***TA-190-2021***, before this Court seeking transfer of the aforesaid petition from Ludhiana to Chandigarh and vide order dated 09.09.2021, passed by the co-ordinate Bench, the same was allowed and the petition filed by the respondent No. 1, seeking custody of the minor child, was ordered to be transferred from the Family Court, Ludhiana to the Court of competent jurisdiction at Chandigarh. The copy of the order is placed on record as Annexure P-1.

5. 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.”

6. Learned counsel for the petitioner has further relied upon **2022 Live Law (SC) 627 N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha**, wherein 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. 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 family condition of the wife, custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and

most important, 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. As per office report, the respondents are served but there is no representation on their behalf.

9. I have heard learned counsel for the petitioner at length and have also perused the material on record very carefully.

10. A perusal of the record reveals that due to matrimonial dispute, the petitioner, along with her minor child, is residing at Chandigarh. She has got registered aforementioned FIR at Chandigarh. She had filed aforementioned criminal complaint at Ludhiana. However, since she is now residing at Chandigarh, she has prayed for transferring the same to the Court of competent jurisdiction at Chandigarh. It is worth noticing here that the petition filed by the respondent No. 1, under the provisions of the Guardians & Wards Act, has already been transferred by this Court, as noticed above.

11. Accordingly, keeping in view of the facts and circumstances of the case, the present petition is allowed and the aforesaid case (COMA) No. 30441/2019, filing No. 4216 of 2019, filed by the petitioner under Sections 12, 17, 18, 19, 20 and 22 of the DV Act, titled as ***Charu Mahajan vs. Sumit Mahajan & others***, is ordered to be transferred from the Court of Judicial Magistrate First Class, Ludhiana to the Court of competent jurisdiction at Chandigarh.

12. The District & Sessions Judge, Chandigarh will assign the said case to the competent Court of jurisdiction. The Court at Ludhiana is

directed to transfer all the record pertaining to the aforesaid case to he District & Sessions Judge, Chandigarh. The parties are directed to appear before the trial Court at Chandigarh within a period of 01 month from today.

22.11.2023
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No