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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
TA-1159-2023 (O&M)
Decided on: 13.12.2023

Amreen Kaur Sidhu and others

...Applicants/Petitioners

Versus

Jasbir Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Bhavya Vats, Advocate for
Mr. Ranjeet K. Jaswal, Advocate
for the Applicants/petitioners.

None for the respondent.

SANJAY VASHISTH, J. (Oral)

1. Present transfer application, under Section 24 CPC, has been filed by the petitioners, for seeking transfer of the petition, bearing No. COMA/34489/2022, filed by the respondent, under Section 12 of the Protection of Women from Domestic Violence Act, 2005, titled as “Jasbir Kaur vs. Amreen Kaur Sidhu and others”, for its transfer from the Court of Ld. Judicial Magistrate 1st Class, Jalandhar, to any Court of competent jurisdiction at Patiala; as other pending cases/litigations between the parties, which were earlier pending before the District Courts, Jalandhar, have already been transferred by this Court to the Courts of competent jurisdiction at Patiala, vide orders dated 14.09.2021, 13.10.2021 and 16.08.2022.

2. During the proceedings of the present transfer petition, Coordinate Bench of this Court in its order dated 11.09.2023, has already recorded, the contention of the applicants-petitioners that in view of the

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orders already passed by this Court to transfer other matters, pending between the parties from Jalandhar to Patiala, present transfer application may be accepted as well.

3. Order dated 11.09.2023, says as under:-

*“Present: Mr. Ranjeet K. Jaswal, Advocate
for the petitioners.*

Learned counsel for the petitioners has referred to the order dated 14.09.2021 passed in TA-567-2021 and TA-600-2021, vide which Civil Suit No.1610/2021 and a petition bearing No.HMA/177/2021 were ordered to be transferred from the Family Court, Jalandhar to Family Court, Patiala. Learned counsel has referred to another order dated 13.10.2021 passed in TA-583-2021, vide which petition under Sections 7 & 25 of Guardians and Wards Act, 1890 was also transferred from the Family Court, Jalandhar to Family Court, Patiala. It is submitted that now the respondent has filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 at Jalandhar.

Notice of motion for 13.12.2023.

In the meantime, the trial Court will adjourn the case beyond the date fixed before this Court.”

4. In the present case, for securing the presence of the respondent, notice of motion was issued on 11.09.2023. As per office report, notice issued to the respondent has been received back served through clerk. However, there is no representation on behalf of the respondent.

5. The present transfer petition has been filed, *inter alia*, on the following grounds:-

i) That marriage of petitioner No.1 and nephew of the respondent

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namely – Gurbir Singh s/o Gurmej Singh (brother of respondent) was solemnized on 16.11.2016, according to the Sikh rites and ceremonies, and one child (daughter) namely; Arnazh Gill, is born out of the said wedlock, who is about 03 years old, who is presently residing with petitioner No.1.

- ii) That due to harassment meted out by Petitioner No.1 at the hands of respondent and her entire in-laws family, she has lodged one case i.e. FIR No.40, dated 14.06.2021, under Sections 406, 498A, 377 of IPC, at Women Police Station Patiala. Besides, one complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005, is also pending before Ld. JMIC, Patiala.
- iii) Distance from Jalandhar to Patiala, is about 154 Kms. (one side), which takes around 2:30-3:00 hours, thus, causing extreme hardships the petitioners.
- iv) That as per paragraph No.10 of the transfer petition, as many as, eight litigations are pending between the parties, wherein, respondent along with other family members, are already pursuing and following the cases before the Courts of competent jurisdiction at Patiala. Thus, a prayer has been made for transferring the present case as well.

6. I have heard learned counsel for the petitioner and gone through the material available on record.

7. In the facts and circumstances similar to the present case, in paragraph Nos. 9 & 10 of the judgment rendered in the case of N.C.V. Aishwarya v. A.S. Saravana Karthik Sha, AIR 2022 SC 4318, Hon'ble the Apex 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

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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.”

8. Further, Hon’ble the Apex Court in **Rajani Kishor Pradeshi v. Kishor Babulal Pardeshi, (2005) 12 SCC 237**, 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.*”

9. However, to avoid any misuse of the lenient view by the female litigants, Hon’ble the Apex Court in **Anindita Das v. Srijit Das, (2006) 9 SCC 197**, has also cautioned that the Courts should ensure that such leniency given to the female litigants should not be misused. Relevant Paragraph 3 of the aforesaid judgment says as under:

“3. Even otherwise, it must be seen that at one stage this Court was showing leniency to ladies. But since then it has been found that a large number of transfer petitions are filed by women taking advantage of the leniency taken by this Court. On an average at least 10 to 15 transfer petitions are on Board of each Court on each admission day. It is, therefore, clear that leniency of this Court is being misused by

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the women.”

10. Thus, this Court is of the view that while adjudicating a transfer petition initiated by the wife in the context of a matrimonial dispute, the Court must take into account a comprehensive array of the following factors:-

- (a) Economic condition and earning capacity of the parties, i.e. husband and wife;
- (b) Social standing of the wife and her dependency on her parents;
- (c) Custody of any minor children involved;
- (d) Education of the children, if any;
- (e) Physical well-being of both, i.e. wife and husband;
- (f) Pending litigation(s) between the parties including criminal cases, if any;
- (h) Accessibility of the location from where the wife resides to the court where the case is pending;
- (i) Availability of convenient commuting options

Undoubtedly, only a harmonious consideration of all these vital aspects would ensure a just and equitable decision in such cases.

11. As already noticed above, despite service and opportunity, the respondent has chosen, not to appear in the present proceedings. Without commenting on the said issue, this Court deems it appropriate to proceed with the prayer of the present applicant-petitioner.

12. Thus, applying the principles of law, laid down by Hon'ble the Apex Court in *N.C.V Aishwarya's case (supra)*, *Rajani Kishor's case (supra)* and *Anindita Das's case (supra)*, this Court deems it appropriate to allow the present petition, by issuing following directions:

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- (i) Petition filed by the respondent, bearing No. COMA/34489/2022, titled as “Jasbir Kaur v. Amreen Kaur Sidhu and others”, pending before the Ld. Judicial Magistrate 1st Class, Jalandhar, is transferred to a Court of competent jurisdiction within Sessions Division, Patiala.
- (ii) Learned District Judge, Jalandhar, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Patiala, by directing both the sides to appear before the Court of learned District Judge, Patiala, on a particular date to be fixed by him, for further proceedings.
- (iii) On receipt of record of the case, learned District Judge, Patiala, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Patiala, to try the same.
- (iv) The concerned Court at Patiala, shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.
- (v) After transfer at Patiala, the concerned Court will accommodate the parties to the *lis* with at least one date in a calendar month.

13. For compliance of the order passed by this Court, Registry is directed to transmit copies of this order forthwith to learned District Judge, Jalandhar and learned District Judge, Patiala, through email(s) as well.

Petition stands **disposed of** in above terms.

(SANJAY VASHISTH)
JUDGE

13.12.2023

J.Ram

Whether speaking/reasoned? **Yes/No**
Whether reportable? **Yes/No**