

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

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TA-1507-2022 (O&M)
Date of decision: 04.09.2023

Upasna and others**...Petitioners****Versus****Parveen Kumar****...Respondent****CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Y. S. Turka, Advocate
for the petitioners.

Mr. Aseem Kaushal, Advocate for
Mr. Manu Loona, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for transfer of the petition filed by the petitioners under Section 125 Cr.P.C., titled as ***Upasna and others vs. Parveen Kumar***, pending in the Court of SDJM, Abohar as well as the Execution petitions, pending before the Family Court, Fazilka, Camp Court at Abohar to the competent Court(s) of jurisdiction at Moga.

Learned counsel for the petitioner has argued that two minor sons and a daughter are residing in the care and custody of the petitioner and the petitioners, on account of a matrimonial discord, have filed aforesaid cases at Abohar, which are pending.

Learned counsel for the petitioners has placed on record a copy of zimini order dated 18.02.2021, passed by the Civil Judge (Jr. Divn.), Abohar, whereby the petition, filed by the respondent-husband under Section 9 of the Hindu Marriage Act, was dismissed on account of non-

payment of maintenance.

It is further submitted that the petitioner-wife is facing great difficulty in prosecuting the said case, as there is a distance of about 150 Kms between the aforesaid two places.

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.”*

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

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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.”

Learned counsel for the respondent-husband has opposed the prayer of the petitioner-wife.

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.

After hearing the counsel for the parties, considering the fact that if the aforesaid petition is not transferred, the petitioner-wife will have to bear the litigation expenses and transportation expenses and also in view of the ratio of law laid down by Hon'ble Supreme Court in **Sumita Singh's** case (supra), **Rajani Kishor Pardeshi's** case (supra) and **N.C.V. Aishwarya's** case (supra), this Court deems it appropriate to allow the present petition, with the following directions:-

(i) *The petition filed under Section 125 Cr.P.C. as*

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well as the Execution petitions, pending at Abohar will be transferred to the competent Court of jurisdiction at Moga.

- (ii) The District Judge, Moga will assign the said petitions/cases to the competent Court of jurisdiction.*
- (iii) The Courts at Abohar are directed to transfer all the record pertaining to the aforesaid case to District Judge, Moga.*
- (iv) The parties are directed to appear before the trial Court at Moga within a period of 01 month from today.*
- (v) The Courts concerned, where the cases are pending between the parties, will accommodate them with one date in a calendar month.*

04.09.2023

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No