

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

CRM-M No.56242 of 2023

Decided on:07.11.2023

Annu Arya

... Petitioner

Versus

Naveen Arya

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Karamjeet Sharma, Advocate
Legal Aid Counsel for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court by filing instant petition under Section 407 Cr.P.C. praying for transfer of CRR/6/2022 titled as *Naveen Arya s/o Inder Singh Vs. Annu Arya w/o Naveen Arya* (Annexure P-1) pending before the learned Additional District and Sessions Judge, Rohtak to the jurisdiction of the learned Additional District and Sessions Judge, Jalandhar.
2. Learned counsel for the petitioner *inter alia* contends that already a petition under Section 125 Cr.P.C. for maintenance and an FIR case under Sections 498-A, 506 IPC are pending in the District Court, Jalandhar against the respondent herein. It is further contended that in order to harass the petitioner, the respondent had filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955 and a civil suit for damages at Rohtak. Further, the complaint filed by the respondent under Section 156 (3) Cr.P.C. was dismissed by the Judicial Magistrate, Rohtak. It is also contended that even the respondent had filed a petition for custody of children before the Court at Jalandhar, which is pending consideration. The petitioner herein is living at Jalandhar along with her two children and the distance between Jalandhar and Rohtak is 365 kms and as

such, it is very difficult for her to travel to such a long distance to pursue the revision petition filed by the respondent at the District Court, Rohtak.

3. Further, learned counsel for the petitioner relies upon the judgments rendered by the Hon'ble Supreme Court in ***Sumita Singh Vs. Kumar Sanjay and another AIR 2002 SC 396*** and ***Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi (2005) 12 SCC 237*** to contend that while deciding the transfer applications, more weightage and consideration should be given to the convenience of the female litigants and transfer of legal proceedings from one court to another court should ordinarily be allowed in order to avoid undue hardship to the female litigants.

4. Heard.

5. A two Judge Bench of the Hon'ble Supreme Court dealt with the power of the Court to transfer proceedings under Sections 24 and 25 of the Civil Procedure Code in ***Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust AIR 2008 SC 1333*** wherein it was held that the power to make such transfers is discretionary in nature and hence, it would be unwise to attempt to shackle it with a blanket formula uniformly applicable to all situations. However, it cannot be denied that the power must be used with abundance of care and caution. Further a three Judge Bench of the Hon'ble Supreme Court in ***Gana Saraswathi Vs. H. Raghu Prasad (2000) 10 SCC 277*** had observed that in the interest of justice, the doctrine of *forum non conveniens* can also be extended to matrimonial proceedings. It was stated that Courts usually allow transfer petitions in such cases to ensure that the wife does not suffer on account of not being able to participate in the proceedings.

6. A two Judge Bench of the Hon'ble Supreme Court in ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha 2022 SCC OnLine SC 1199*** 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 socio-economic 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. In the present case, the petitioner has to look after two children aged 4 and 10 years, who are studying at Jalandhar. Furthermore, distance of Jalandhar from Rohtak is 350 kms, which takes 5-6 hours to travel each side and therefore, it would cause immense hardship to the petitioner, much less, she will have to bear the transportation expenses to attend the court proceedings on each and every date.

8. In view of the law settled by the Hon’ble Supreme Court in ***Sumita Singh’s case (supra)***, ***Rajani Kishor Pardeshi case (supra)*** and ***N.C.V. Aishwarya’s case (supra)***, the present petition is allowed *in limine*, in order to curtail the cost of litigation of the respondent. Resultantly, CRR/6/2022 titled as *Naveen Arya s/o Inder Singh Vs. Annu Arya w/o Naveen Arya* pending before the learned Additional District and Sessions Judge, Rohtak is ordered to be transferred to the jurisdiction of learned District and Sessions Judge, Jalandhar.

The District Judge, Rohtak is directed to transfer the record pertaining to the aforesaid case to the District Court, Jalandhar and the District Judge, Jalandhar will assign the said petition to the competent court of jurisdiction. Parties are directed to appear before the trial Court on 16.01.2024.

9. However, before parting with this order, liberty is granted to the respondent to revive this petition if he intends to contest the instant petition, subject to the following terms:-

- (a) The respondent will clear all arrears of maintenance, if any, in terms of the petition filed by the petitioner under Section 125 Cr.P.C. or in any other proceedings.
- (b) The respondent will undertake on affidavit to pay the expenses of transportation availed by the petitioner to attend the court proceedings at Rohtak and ₹500/- as diet charges for each and every date of hearing.
- (c) The respondent will bring a demand draft of ₹25,000/- towards the litigation expenses of the petitioner to pursue the case at Rohtak, in case the respondent opt to contest this petition.

(HARPREET SINGH BRAR)
JUDGE

November 07, 2023
Pankaj*

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No