

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

2023:PHHC:074475

205

**TA No.1572 of 2022 (O&M)
Date of decision: 22.05.2023**

Kulwinder Kaur

...Petitioner(s)

v

Palwinder Singh

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Inder Pal Singh, Advocate for the petitioner.

Mr. SS Chahal, Advocate for the respondent.

NIDHI GUPTA, J.(ORAL)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act, 1955, titled "Palwinder Singh v. Kulwinder Kaur" pending in the Court of Principal Judge, Family Court, Shri Muktsar Sahib, to a court of competent jurisdiction at Tarn Taran.

2. Learned counsel for the petitioner, inter alia, submits:

i) that the marriage between the parties was solemnized about 17-18 years ago.

ii) that two children were born out of this wedlock.

iii) that the petitioner is residing with her brother at Tarn Taran.

iv) that the distance between her place of residence and place of proceedings is 135 kms. (one side).

v) that father of the petitioner has died and she has no source of income.

3. Learned counsel for the respondent opposed the present petition and states that unlike the petitioner, respondent-husband is working hard as he has to support his children who are residing with him. It is submitted

that respondent has to provide the children all the amenities required for their physical welfare, as also all love and emotional support is also provided only by him as their mother has deserted the matrimonial home. It is further submitted that in this situation it will be more inconvenient and problematic for him to travel to Tarn Taran. Further, it is submitted that the petitioner is presently lodged in Central Jail, Faridkot and she has concealed that earlier TA No.108 of 2019 has been withdrawn by her.

4. I have heard learned counsel for the parties.

5. I find merit in the submissions advanced on behalf of the respondent. This Court is well aware of the fact that preponderance of law in such-like cases of transfer emanating from matrimonial disputes is in favour of the wife. However, in view of the above noted facts and circumstances of the present case, it is clear that it is the respondent who is solely responsible for the complete welfare of the children who are in his care and custody. 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 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. Further, the petitioner has failed to divulge the fact that earlier TA No.108 of 2019 filed by her was dismissed as withdrawn vide order dated 30.10.2019 appended as Annexure R1 to the reply filed by the respondent. The petitioner has not revealed that she is undertrial prisoner in FIR No.106 dated 20.06.2018 registered against her under Section 304 IPC at Police Station Kabarwala, District Sri Muktsar for causing death of the father of respondent. At present, admittedly, the petitioner is lodged in Central Jail, Faridkot.

6. Moreover, in other similar cases like this present one, the Hon'ble Supreme Court, as well as this Court have refused relief to the wife. One such case which may be referred to is: **(2006) 9 SCC 197 'Anindita Das Vs. Srijit Das'** wherein Hon'ble Supreme Court under similar circumstances dismissed the wife's application seeking transfer of petition filed by the husband. Reference in this regard may also be made to two cases of this Court where, in similar circumstances this Court had dismissed transfer applications filed on behalf of the wife. These are: **TA no. 126 of 2018 Smt. Akhwinder Kaur Vs. Sh. Gurpreet Singh;** and **TA No. 299 of 2019 Nisha alias Manisha vs. Amarveer Yadav.**

7. Accordingly, in view of the facts as noted above, this petition stands dismissed. Pending applications, if any, stand disposed of.

22.05.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge