

TA-1484-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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TA-1484-2023 (O&M)
Decided on: 12.12.2023

Pooja Rani

...Applicant/Petitioner

Versus

Sanjeev Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Amrit Singh Kang, Advocate for the Applicant/petitioner.

None for the respondent.

SANJAY VASHISTH, J. (Oral)

1. Present transfer application, under Section 24 CPC, has been filed by the applicant-wife, for seeking transfer of the petition bearing No.HMA/278/2023, filed by the respondent–husband, under Section 9 of the Hindu Marriage Act, 1955, titled as “Sanjeev Kumar Vs. Pooja Rani”, presently pending in the Court of Learned Principal Judge, Family Court, SBS Nagar, to any Court of competent jurisdiction at Hoshiarpur.
2. Vide order dated 17.11.2023, while issuing notice of motion the following order was passed by this Court:

*‘Present: Mr. Amrit Singh Kang, Advocate
For the applicant-petitioner.*

1. Order dated 16.11.2023, says as under:

*“Present: Mr. Amrit Singh Kang,
Advocate for the applicant/petitioner.*

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*In Para No.2 of the present
petition, it has been averred that
marriage between
applicant/petitioner(wife) and
respondent (husband) was solemnized
on 02.05.2018, as per Christian rites
and ceremonies in CNI Church,
Khnaura, District Hoshiarpur,
whereas the respondent (husband)*

has filed petition under Section 9 of the Hindu Marriage Act, 1955 (Annexure P-1), stating therein that marriage was performed on 02.05.2017, as per religious rites and ceremonies prevailing in their community, at village Khanora, PS Mehtiana, District Hoshiarpur, and in para No.2 of the said petition, religion of the parties has been mentioned as "Hindu".

Faced with this situation, learned counsel for the applicant/petitioner prays for a short accommodation, enabling him to seek instructions with regard to correct date of marriage, and according to which rites and ceremonies marriage between the parties was solemnized.

Adjourned to 17.11.2023."

2. Learned counsel submits that in fact, in the petition filed under Section 9 of the Hindu Marriage Act, 1955 (in short, 'HMA'), certain wrong facts have also been stated by the respondent-husband, therefore, visiting of the petitioner to the Courts at SBS Nagar, would be a futile exercise, because, there are so many discrepancies in the petition filed under Section 9 of HMA, itself.

3. Notice of motion for 12.12.2023.

Meanwhile, further proceedings in the petition filed under Section 9 of the HMA, in the Courts at SBS Nagar, would remain stayed.

To be shown in the urgent list.'

3. As per office report, notice sent to the respondent has been received back, served through his mother. In this regard learned counsel for the petitioner submits that in fact, respondent is evading the service because the address given is the same, which was given by him in the divorce petition.

Otherwise, also this Court is of the view that for the issue to be adjudicated by this Court, on the basis of guidelines issued by Hon'ble Apex Court; service upon the respondent is not required and same should be exempted at this stage.

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

- i) Petitioner-wife and respondent-husband got married on 02.05.2018, at CNI Church, Khnaura, District Hoshiarpur, according to the Christian rites and ceremonies.
- ii) Out of the said wedlock, two female child namely, Gurkirat and Samreet Kaur, were born, who are now aged about 05 years and 02 years respectively and are residing with the applicant-wife.
- iii) Petitioner-wife has filed a petition under Section 10 of the Divorce Act, 1872, which is pending in the Court at Hoshiarpur and respondent is contesting the same.
- iv) Traveling from Hoshiarpur to SBS Nagar, is a distance of around 65 Km (one side), which takes around 1 hours, thus, causing extreme hardships to the petitioner-wife as well as the minor children.
- v) Petitioner-wife is financially dependent on her parents. Due to lack of convenient transportation options, she is compelled to rely on public transport, resulting in significant hardships.
- vi) Financial condition of the parental home of the petitioner-wife is also not sound, and her parental family lives in a hand to mouth condition.

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

6. 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 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. 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.*”

8. 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 the women.”

9. 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;
- (g) Accessibility of the location from where the wife resides to the court where the case is pending;
- (h) 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.

10. 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:

- (i) Petition filed by respondent - husband under Section 9 of the Hindu Marriage Act, 1955, titled as “Sanjeev Kumar Vs. Pooja Rani”, pending in the Court of Learned Principal Judge, Family Court, SBS Nagar, is transferred to a Court of competent jurisdiction within Sessions Division Hoshiarpur.
- (ii) Learned District Judge, SBS Nagar, is directed to transfer complete record pertaining to the aforesaid case to learned

District Judge, Hoshiarpur, by directing both the sides to appear before the Court of learned District Judge, Hoshiarpur, on a particular date to be fixed by him, for further proceedings.

- (iii) On receipt of record of the case, learned District Judge, Hoshiarpur, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Hoshiarpur, to try the same.
- (iv) The concerned Court at Hoshiarpur, 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 Hoshiarpur, the concerned Court will accommodate the parties to the *lis* with at least one date in a calendar month.

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

Petitioner through her counsel, is also directed to ensure her appearance accordingly.

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

Pending misc. application(s), if any, also stands disposed of.

(SANJAY VASHISTH)
JUDGE

12.12.2023
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No