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

TA-1594-2023 (O&M)
Decided on: 12.12.2023

Manpreet Kaur

...Applicant/Petitioner

Versus

Gurbinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Ashok Bhardwaj, Advocate
for the applicant/petitioner.

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SANJAY VASHISTH, J. (Oral)

1. Present transfer application, under Section 24 CPC, has been filed by the petitioner - wife, for seeking transfer of the petition, bearing No. HMA/81/2022, filed by the respondent – husband, under Section 13 of the Hindu Marriage Act, 1955, titled as "Gurbinder Singh v. Manpreet Kaur", presently pending in the Court of Principal Judge, Family Court, Samrala, to any Court of competent jurisdiction at Sangrur.

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

i) Petitioner-wife and respondent-husband got married on 29.06.2020, at Gurudwara Mehal Mubark, Dhuri Road, Sangrur, according to the Sikh rites and ceremonies.

ii) Out of the said wedlock, one daughter, now aged about two years, was born, who is minor and staying/residing with the petitioner-wife.

iii) Petitioner-wife is not earning anything, while the respondent-husband is a Chef in a 5 star hotel.

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iv) To attend proceedings in the Court of Principal Judge, Family Court, Samrala, applicant/petitioner has to cover a distance of about 70 Kms. (one side), thus, causing extreme hardships to the petitioner-wife as well as the minor child.

v) Petitioner-wife is financially dependent on her parents, and lacks convenient transportation options, thus, is compelled to rely on public transit, 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.

vii) Due to matrimonial discord, applicant/petitioner has also filed –

(i) petition under Section 25 of Guardian and Wards Act, is pending consideration before the Principal Judge, Family Court, Sangrur for 19.12.2023;

(ii) petition under Sections 12, 18, 20, 21, 22 and 23 of Protection of Women from Domestic Violence Act,2005 is pending consideration before the Principal Judge, Family Court, Sangrur;

(iii) petition under Section 125 Cr.P.C. before the Court of Principal Judge, Family Court, Sangrur is also pending consideration for 30.01.2024.

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

4. 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."*

5. 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 ordinary be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships."*

6. 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,*

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> *therefore, clear that leniency of this Court is being misused by the women."*

7. 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.

8. This Court is of the opinion that, for the purpose of deciding the transfer petition, it is not necessary to issue notice to the respondent-husband. Otherwise, both the parties would be burdened with litigation costs and transportation expenses, which shall be taxing for both the sides.

9. 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

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allow the present petition, by issuing following directions:

(i) Petition filed by respondent - husband under Section 13 of the Hindu Marriage Act, 1955, bearing No. HMA/81/2022, titled as "Gurbinder Singh v. Manpreet Kaur", pending in the Court of Principal Judge, Family Court, Samrala, is transferred to a Court of competent jurisdiction within Sessions Division Sangrur.

(ii) Learned District Judge, Ludhiana/Principal Judge, Family Court, Samrala, District Ludhiana, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Sangrur, by directing both the sides to appear before the Court of learned District Judge, Sangrur, on a particular date to be fixed by him, for further proceedings.

(iii) On receipt of record of the case, learned District Judge, Sangrur, will either keep the said case in his own Court or to assign the same to a Court having competent jurisdiction within Sessions Division Sangrur, to try the same.

(iv) The concerned Court at Sangrur, 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 Sangrur, the concerned Court will accommodate the parties to the *lis* with at least one date in a calendar month.

10. However, liberty is granted to the respondent-husband to get the present transfer application/petition revived, if so advised, to contest the same, subject to the conditions that:

(i) Petitioner-wife has concealed any material fact or aspect while filing the present transfer application/petition, with an intention to mislead this Court for seeking transfer of the case.

OR

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(ii) Respondent-husband is suffering from any substantial physical/mental disability or ailment.

OR

(iii) Respondent-husband will clear all arrears of maintenance amount, if any, in terms of a petition filed by the petitioner-wife either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act, or under any other law.

AND

(iv) Respondent-husband will file an affidavit, giving an undertaking to pay Rs.1,000/- per day, to the petitioner-wife for attending the Court proceedings at Samrala, District Ludhiana, on each and every date of hearing of the case.

AND

(v) Alongwith the application for revival of the present transfer application/petition, respondent-husband will furnish a demand draft of Rs.25,000/- in favour of petitioner-wife, towards the litigation expenses, i.e. to pursue the case at Samrala, District Ludhiana.

11. Since the present transfer application/petition is being disposed of without issuing notice to the respondent, in order to ensure appearance of the parties before learned District Judge, Sangrur, as per the direction of learned District Judge, Ludhiana/Principal Judge, Family Court, Samrala, District Ludhiana, it is also directed that a copy of this order be sent to the respondent through registered post, besides sending copies of this order to learned District Judges concerned, through email as well.

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

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

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

12th December, 2023 **(SANJAY VASHISTH)**
Sonia Puri **JUDGE**

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

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