



CRM-M-4738-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-4738-2024

Date of decision: 21.11.2024

Mandeep Kaur

...Petitioner

V/s

Harpreet Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Manoj Singh, Advocate for
Mr. Simranjeet Singh, Advocate for the petitioner.
Mr. Arvind Kashyap, Advocate for the respondent.

SUMEET GOEL, J.

1. The case in hand is a transfer petition preferred by the petitioner-wife under Section 407 of Cr.P.C. read with Section 482 of Cr.P.C., 1973 seeking transfer of the maintenance petition, filed by her, under Section 125 of Cr.P.C., 1973 from the Family Court, SAS Nagar, Mohali to a competent Family Court at Barnala, Punjab.
2. Learned counsel for the petitioner has argued that the petitioner-wife had been turned out of the matrimonial home and thereafter she started residing at Barnala in the first instance. Thereafter, on account of compelling circumstances, the petitioner had to move to Mohali, Punjab to reside with her brother. The petitioner had, at that time, instituted the maintenance petition at Family Court, Mohali in the year 2020. Thereafter, due to supervening circumstances, she has to move back to her parental home in District Barnala (Punjab). It is on this account primarily that the transfer of the maintenance petition from Mohali (Punjab) to Barnala



(Punjab) is sought for. Learned counsel has iterated that it is extremely difficult and inconvenient for the petitioner to pursue her case further at Mohali since she is living at Barnala. It has been submitted that the distance between the Mohali to Barnala is 167 kilometers. Counsel for the petitioner has further submitted that there is no able adult member in the family of the petitioner-wife who can accompany her to attend the Court proceedings. Thus, the transfer of the maintenance petition from Mohali to Barnala is sought for.

3. Notice of motion was issued whereinafter reply has been filed on behalf of the respondent-husband. It has been iterated by the learned counsel for the respondent that a complaint under the Protection of Women from Domestic Violence Act, 2005 has also been instituted by the petitioner-wife which is pending adjudication at Mohali. Learned counsel for the respondent-husband has further argued that one criminal revision petition (seeking enhancement of interim maintenance) is also pending adjudication at Mohali which has also been instituted at the instance of the wife. Learned counsel for the respondent-husband has further iterated that a counsel has already been engaged at Mohali by the respondent (husband) and, therefore, the transfer of the maintenance petition will result in additional financial burden upon the respondent-husband. In view of these submissions, the dismissal of the petition in hand is sought for.

4. I have heard learned counsel for the rival parties and have perused the record.

5. The seminal issue in the case in hand is whether the maintenance petition, preferred by the petitioner-wife, before the Family



Court at Mohali, Punjab deserves to be transferred to a competent Family Court at Barnala (Punjab).

6. Section 407 of Cr.P.C., 1973 encapsulates the statutory provision regarding the power of the High Court to transfer cases and appeals from one Court to another within its jurisdiction. At this juncture, it would be germane to reiterate that the equivalent provision contained in Section 447 of BNSS, 2023 is, in essence, on similar lines insofar as the parameters for transferring of criminal cases/appeals is concerned.

6.1. An elementary reading of the above provision(s) reflects that the parameters for consideration for exercise of power under this provision are *viz.* fair and impartial enquiry or trial; a question of law of unusual difficulty arising; the general convenience of parties to the *lis*; the general convenience of the witnesses; the law (Cr.P.C. or BNSS) requiring such an order to be passed & expediency for the ends of justice.

6.2. It goes without saying that assurance of a fair trial; to all the parties to the *lis*, witnesses, as also the public at large; is the paramount feature of criminal justice dispensation system. A fair trial is the cornerstone of our criminal jurisprudence and denial of fair trial, to all the concerned, is crucifixion of human rights. Fairness of the trial is a virtue that is sacrosanct in our jurisprudential set up and no price is too heavy to protect this virtue. It has to be unmistakably understood that a criminal trial, which is primarily aimed at ascertaining truth, has to be fair to all the concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial & it may have to be determined in seemingly infinite variety of, actual situations, with the ultimate objective in mind *viz.*, whether something



that was done or said either before or at the trial deprived the quality of fairness, to a degree, where miscarriage of justice has been precipitated.

6.3. More often than not, a plea for transfer of trial is primarily based upon the convenience of parties to trial and/or witnesses. The statutory mandate; as contained in Section 407 of Cr.P.C, 1973/Section 477 of BNSS, 2023; does prescribe for transfer of trial etc., on account of general convenience of parties or witnesses. This transfer jurisdiction of the High Court ought to be exercised sparingly. Ordinarily, the proceedings ought to be undertaken at its jurisdictional place as prescribed by law. The convenience of a party/witness ought not to be given a very liberal meaning *lest* it causes easy shifting of trial. The High Court must exercise caution to ensure that, the threshold for such transfers is not set too low, thereby preventing the justice system from being manipulated by baseless requests that could hinder the fair and efficient administration of justice.

6.4. Furthermore; the convenience has to be adjudged on the touchstone of relative convenience and difficulties of all the parties concerned in the process. Convenience *may* comparative convenience of all the concerned is required to be taken into consideration while adjudicating a transfer plea. In matrimonial matters; such as petition for grant of divorce, petition for maintenance filed under Section 125 of Cr.P.C./Section 144 of BNSS, 2023; given the background of general socio-economic paradigm in our society, wife's convenience in a transfer petition is required to be accorded pre-eminence and be considered at a higher pedestal. Indubitably, the convenience of a party in a matrimonial dispute is a prime/relevant factor



for consideration of a transfer petition, especially when the petition is filed by the wife.

7. In matrimonial matters, the cardinal principle for exercise of power, for transfer of trial/proceedings is that the ends of justice should demand the transfer of the suit, appeal or other proceeding. In such 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, their behavioural patterns 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.

8. Though the convenience of wife is a paramount factor for consideration for transfer of matrimonial related proceedings but the same is not a matter of absolute right bestowed upon the wife. Where the petition (which is sought to be transferred) is instituted at the instance of the wife herself, cogent reasons are required to be shown for transfer thereof. In other words, the convenience of the wife is indubitably is an important factor to be considered in the proceedings which are initiated/instituted at the instance of the husband. However, the converse cannot be said to be applicable with the equal vigour. In a given case; if the wife has instituted proceeding(s) pertaining to matrimonial dispute at her own instance, she would be required to show pertinent reasons for seeking transfer thereof. Such reason(s) can, only and only, be *ad rem*. Any generic reason would certainly be amounting



ought to be rejected. In case; if wife in question is employed in a transferable job, she cannot be permitted to seek transfer *nay* repeated transfer(s) of the matrimonial related litigation(s) if her job results in her being transfer from one place to another. The latitude required to be exercised in favour of a wife, while dealing with the plea for transfer of a matrimonial dispute, cannot be stretched to such an extent that the Court is approached for transfer of such matrimonial related litigation at the mere asking of the wife. In matrimonial disputes, often, a pragmatic approach while exercising power to transfer proceedings is undertaken to resolve undue hardship to the wife/woman, by shifting the place of the trial/hearing to accommodate her convenience (of commuting, or being a primary caregiver to young children, or akin attending factors). Such a convention ought not be interpreted as an advantage accorded to the wife, but a concession attributable, only and only, towards facilitating the proceedings and expeditious resolution. However, this concession cannot be claimed as an entitlement or be allowed to turn into a cause for recurring shifting of trials, if the wife has chosen to shift/change her place of living or she is employed in such a job wherein she can be transferred frequently. Such plea *nay* repeated plea(s) for transfer of the proceedings/trial will impede the very process for which such transfer is granted, i.e. facilitating the proceedings and expeditious adjudication of matrimonial disputes.

9. The maintenance petition in question was instituted by the petitioner-wife on her own accord. The transfer is primarily sought for on the ground that she has now shifted from Mohali to Barnala. This, by itself,



the maintenance proceedings initiated at her instance. In case the transfer petition in hand is granted, it will indubitably result in financial implicated/burden upon the respondent-husband. Moreover, the inconvenience pleaded by petitioner in pursuing maintenance proceedings in questions comes out as a farce plea, when seen in backdrop of other case(s) being pursued by her against the respondent-husband in Mohali itself. Thus, the reason(s) pleaded by petitioner-wife seeking transfer of maintenance proceedings is specious.

10. Keeping in view the totality of the facts and circumstances of the case, no cause is made out to direct for transfer of the maintenance petition filed by the petitioner-wife (herein) under Section 125, Cr.P.C., 1973 from the Family Court at Mohali to a competent Family Court at Barnala. *Ergo*, the petition in hand deserves rejection for the *nonce*.

11. Ordered accordingly.

12. Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the trial Court shall proceed further, in accordance with law, without being influenced with them.

13. Pending applications), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

November 21, 2024
Ajay