



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.231

TA-202-2024

Date of Decision: 29.08.2024

SUKHWINDER KAUR

....Applicant

Versus

MICHAEL UNVITH BHATOE AND OTHERS

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Madhur Singh, Advocate
for the applicant.

Mr. Vishal Sodhi, Advocate
for the respondents.

ARCHANA PURI, J. (Oral)

The applicant has filed the present application for seeking transfer of the petition under the Protection of Women from Domestic Violence Act i.e. COMA/262/2021, titled '*Sukhwinder Kaur Vs. Michael Unvith Bhatoe Etc.*', filed at the instance of applicant at Amritsar, when she was residing with respondent No.1 at Amritsar, to the Court of competent jurisdiction at Hoshiarpur.

In pursuance of the notice issued, respondent has made appearance through counsel and filed reply.

Learned counsel for the parties heard.

At the very outset, the counsel for the applicant has submitted that the applicant-wife had filed the petition under the Protection of Women from Domestic Violence Act, at Amritsar, when she was residing in the matrimonial home with respondent No.1-husband. However, due to matrimonial discord, the applicant is presently residing with her parents at



Hoshiarpur. In the given circumstances, it is submitted that it is difficult for the applicant to pursue the aforesaid petition, from a distance of about 160 kilometres. Also, it is submitted that the minor daughter born from the wedlock of the parties to the lis, is in the care and custody of respondent No.1-husband, at present. Even, it is submitted that the divorce petition was also filed by respondent No.1-husband, which, upon the order passed by this Court in TA-915-2022, has been transferred from Amritsar to Hoshiarpur. Copy of the said order is Annexure P-4. As such, a prayer has been made for acceptance of the transfer application.

On the other hand, learned counsel for the respondents, while making reference to the reply filed, has assiduously submitted that no case is made out for transfer of the petition under the Protection of Women from Domestic Violence Act, as the applicant had left the matrimonial home, while leaving the child, who was aged 2 years, at the relevant time. Respondent No.1-husband is taking care of the minor child. There is no one to look after the minor child. Also, it is submitted that complaint under Section 340 Cr.P.C., as well as complaint under Sections 323, 107, 354-A and 34 IPC, filed against the applicant, are pending in the Courts at Amritsar. Besides the same, another complaint under Sections 323, 425, 427, 201, 319, 349, 350, 351 and 34 IPC i.e. COMI/169/2021, is also pending in the Courts at Amritsar. In the same, summoning order has been passed qua the applicant. In the light of the same, it is submitted that since three cases are already pending in the Courts at Amritsar, the present application may be dismissed.

In view of the submissions aforesaid, beneficial reference is made to *N.C.V. Aishwarya vs. A.S.Saravana Karthik Sha, 2022 INSC*



1310, wherein, the Hon'ble Supreme Court made observations, with regard to the various conditions, ought to be taken into consideration, while dealing with the transfer of the legal proceedings, which are reproduced, as herein given:-

“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.”

Also, reference is made to ***Sumita Singh vs. Kumar Sanjay and another, 2001(10) SCC 41***, and ***Rajani Kishor Pardeshi vs. Kishor Babular Pardeshi, 2005(12) SCC 237***, wherein, it has been observed that convenience of the wife is to be preferred and looked into.

It is well settled that while considering the transfer of the matrimonial dispute/case, the Court is to consider the family condition of the wife, custody of the children, economic condition of the wife, her physical health and the extent of her earning capacity, as well as earning capacity of the husband and most important, convenience of the wife, more particularly, considering the distance between the two places, where the litigation is already pending and is proposed to be now transferred and also about the



connectivity of the place from her place of residence and bearing of the litigation charges and travelling expenses.

In this backdrop, advertent to the case in hand, it is pertinent to mention that the applicant, at present, is residing at Hoshiarpur, with her parents, on account of matrimonial dispute with respondent No.1-husband. Earlier, while she was residing at Amritsar in the matrimonial home with respondent No.1, she had filed the petition under the Protection of Women from Domestic Violence Act. Even, an FIR bearing No.44 dated 06.05.2022, under Sections 406 and 498-A IPC was got lodged by the applicant at Police Station Chabbewal and trial qua the same is pending in the Courts at Hoshiarpur. Besides the same, another petition under Section 125 Cr.P.C. has also been filed by the applicant, which is also pending at Hoshiarpur.

Also, it is evident from Annexure P-4 that the divorce petition filed at the instance of the respondent-husband, which was filed at Amritsar, has since been transferred to Hoshiarpur, vide order dated 09.12.2022.

As such, there are three cases pending, arising from this matrimonial dispute, at Hoshiarpur. No doubt, it is submitted by the counsel for the respondents that three complaints have been filed by the respondent(s) against the applicant, the detail whereof is given in paragraph No.4 of the reply and the same are pending at Amritsar. May it be so, both the sides are indulging in litigation to the equal effect, on account of the matrimonial dispute.

However, it is a well settled position of law that the convenience of the wife ought to be taken into consideration, while dealing with the transfer application in a matrimonial dispute. No doubt, as



submitted by the counsel for the respondent that the minor child is in the custody of respondent No.1-husband and there is no one to look after the child, apart from respondent No.1, but on query by the Court, it has been disclosed by the counsel that the parents of respondent No.1 are also residing with him. In the given circumstances, it cannot be concluded that respondent No.1 will not be able to take care of the daughter, in the eventuality of the transfer application, being accepted and case being transferred to Hoshiarpur.

Considering the aforesaid circumstances, more particularly, considering Amritsar to be at a distance of about 160 kilometres from Hoshiarpur, the present application is hereby accepted and the petition under the Protection of Women from Domestic Violence Act i.e. COMA/262/2021, titled '*Sukhwinder Kaur Vs. Michael Unvith Bhatoe Etc.*', stands transferred from Family Court Amritsar, to the Court of competent jurisdiction at Hoshiarpur. The requisite record of the aforesaid case be sent by Family Court Amritsar, to the District and Sessions Judge, Hoshiarpur.

Learned District and Sessions Judge, Hoshiarpur, shall assign the said petition to Family Court Hoshiarpur. Even, the parties are directed to appear before Family Court Hoshiarpur, within a period of one month from today onwards.

29.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No