



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.206

Date of Decision: 04.09.2024

1. TA-239-2022

ASHA
Versus
....Applicant

RAMESH
.....Respondent

2. TA-324-2022 (O&M)

ASHA
Versus
....Applicant

RAMESH AND ANOTHER
.....Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Kuldeep Singh Siwach, Advocate
for the applicant (in both the cases).

Mr. Padamkant Dwivedi, Advocate
for the respondent(s) (in both the cases).

ARCHANA PURI, J. (Oral)

Vide this order, I shall dispose of two applications, filed by
Asha-applicant/wife, for seeking transfer of the litigation, pending between
the parties to the lis, arising from her matrimonial alliance.



TA-239-2022 AND TA-324-2022 (O&M)

TA-239-2022 has been filed by the applicant-wife for seeking transfer of the divorce petition i.e. HMA/42/2021, titled '*Ramesh Vs. Asha*', filed at the instance of respondent-husband.

TA-324-2022 has been filed by the applicant-wife for seeking transfer of the petition under Section 25 of the Guardians and Wards Act i.e. GW/15/2021, titled '*Asha Vs. Ramesh and Another*', thereby seeking custody of the minor children, born from the wedlock of the parties to the lis.

Both the aforesaid cases are pending in the Courts at Fatehabad and the applicant is seeking transfer of the same to the Court of competent jurisdiction at Jind.

In pursuance of the notice issued, respondents have made appearance through counsel and filed short replies in the respective applications.

Learned counsel for the parties heard.

For the convenience of the parties, the facts, as well as the memorandum of parties, shall be referred, as pleaded in TA-239-2022.

At the very outset, the counsel for the applicant has submitted that the parties to the lis are residing separate, on account of matrimonial discord. Two children born from the wedlock of the parties to the lis, one daughter and one boy, who are aged 9 years and 6 years, respectively, are in the care and custody of the respondent-husband. The applicant had already filed petition under Section 125 Cr.P.C., which is pending in the Courts at Jind. Earlier, the applicant had filed petition under the Protection of Women from Domestic Violence Act, but however, the same was withdrawn, after filing of the transfer application. It is also submitted that the distance of



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Fatehabad from Jind is about 120 kilometres and thus, it is difficult for the applicant to commute to Fatehabad, to defend the cases. On this account, a prayer has been made for allowing of the transfer application.

On the other hand, the counsel for the respondent, while making reference to the contents of reply, has assiduously submitted that both the children, born from the wedlock of the parties to the lis are studying in Government Middle School, Shekhpur Dadoli, Fatehabad. The daughter is a student of 3rd class and the son is a student of 1st class. Keeping in view the tender age of the children, it is submitted by the counsel that it shall be difficult for the respondent to pursue the divorce petition, if transferred to Jind.

Also, it is submitted by the counsel for the respondent that the applicant-wife is having a live-in-relationship with Rakesh Kumar, resident of village Banawali, District Fatehabad. Also, the counsel for the respondent has made reference to Annexure R-3, which is the relationship notice, sent by the applicant to the S.H.O. and other police officers, wherein, she had categorically stated about herself (applicant) to be residing along with the daughter, with one Rakesh Kumar, son of Rameshwar son of Sultan, cast Jaat, resident of village Banawali, Sub-Tehsil Bhattu Kalan, District Fatehabad. Further, the counsel for the respondent has pointed out that along with this notice, an affidavit was also filed, copy whereof is Annexure R-4. The counsel has made reference to the contents of the affidavit, relevant portion whereof is reproduced in verbatim as hereingiven:-

‘..... By leaving my husband’s house on my own free will, without any pressure, considering the good and well-being of



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myself and my girl Poonam age 7 years, residing with Rakesh Kumar age 35 years s/o Rameshwar s/o Sultan, Caste Jaat, resident of village Banawali, Sub-Tehsil Bhattu Kalan, District Fatehabad. I am residing with my own free will without any pressure or without any greed. He has a good land and does hard work, and will take care of me and my girl. I will also work hard and stay with Rakesh so that my future and my girl's future can be secured.'

Also further, there is affidavit of Rakesh Kumar, with whom the applicant is having live-in-relationship, copy whereof is Annexure R-5, wherein, Rakesh Kumar, has categorically admitted about Asha daughter of Satish Kumar Hasi, to be living with him in live-in-relationship, with his consent.

In view of the aforesaid documents coming forth, it is submitted by the counsel for the respondent that the applicant, herself, is deviated from righteous path and therefore, the transfer application, if allowed, shall amount to giving a reward to the applicant, for her misconduct. As such, a prayer has been made for dismissal of the transfer application.

In view of the rival submissions made by the counsel for the parties, it is pertinent to mention that no doubt, it is a settled position of law that the convenience of the wife ought to be taken into consideration, in the transfer application, while dealing with a matrimonial dispute. However, the same is not a thumb rule. Other circumstances, spelt out from the material coming on record, are also to be taken into consideration.

As evident from the documents annexed with the reply, filed at the instance of the respondent-husband, it is evident that the applicant is in a



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live-in-relationship, with Rakesh Kumar and both the children, born from the wedlock of the parties to the lis, are in the care and custody of the respondent-husband. Considering the same, definitely, it shall become difficult for the husband also, to pursue the divorce petition, if the same is transferred to Jind, which is at a distance of 120 kilometres, from Fatehabad. However, considering the reprehensible behaviour of the applicant, no case, as such, is made out for allowing the transfer applications.

Hence, the transfer applications are hereby dismissed.

04.09.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No