

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M No.11628 of 2024

Date of Decision:04.03.2024

Priyanka ... Petitioner

Versus

State of Punjab and another ... Respondents

**CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Harsh Jain, Advocate  
for the petitioner.

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**HARPREET SINGH BRAR, J. (ORAL)**

1. The petitioner has approached this Court by filing instant petition under Section 407 Cr.P.C. praying for transfer of case bearing No.CHI/397/2023 titled as *State of Punjab Vs. Rajeshwar Singh* (Annexure P-1) pending before the learned Judicial Magistrate 1<sup>st</sup> Class, Pathankot to the jurisdiction of the learned Judicial Magistrate 1<sup>st</sup> Class, Dera Bassi (Punjab).
2. Learned counsel for the petitioner *inter alia* contends that petitioner and respondent No.2 married on 18.04.2018 according to Hindu rites and ceremonies and in the month of September, 2019 when she got pregnant, respondent No.2 asked her bother to take her to the parental house for care. She gave birth to a girl child on 06.05.2020 at Civil Hospital, Sector 32, Chandigarh. Thereafter, when she returned to her in laws house, she was not given any attention and her husband told her to stay at Chandigarh, as he has to go Italy for work. Respondent No.2 refused to take responsibility of the petitioner and the newly born baby and she was thrown out of the matrimonial home. The petitioner is now living at her parental house and working as maid to earn her livelihood. She has lodged FIR No.52/2023 under Sections 341, 323, 506 IPC against respondent

No.2 and case bearing CHI No.397 of 2023 is pending before the learned Judicial Magistrate 1<sup>st</sup> Class, Pathankot. It is further contended that petitioner keeps ill-health and she is advised to take complete bed rest for 2-3 months. Reliance in this regard placed upon the medical report attached with the petition as Annexure P-2.

3. Learned counsel for the petitioner further contends that the petitioner has also filed a petition under Section 125 Cr.P.C. for maintenance in the Family Court at Dera Bassi as well as complaint bearing No.COMA/64/2023 before the Judicial Magistrate 1<sup>st</sup> Class, Dera Bassi. It is also contended that distance between Pathankot and Dera Bassi is about 271 kms and it is not feasible for her to travel for such distance to attend court proceedings at Pathankot with a child of about 4 years and owing to her bad health.

4. Further, learned counsel for the petitioner relies upon the judgments rendered by the Hon'ble Supreme Court in ***Sumita Singh Vs. Kumar Sanjay and another AIR 2002 SC 396*** and ***Rajani Kishor Pardeshi Vs. Kishor Babulal Pardeshi (2005) 12 SCC 237*** to contend that while deciding the transfer applications, more weightage and consideration should be given to the convenience of the female litigants and transfer of legal proceedings from one court to another court should ordinarily be allowed in order to avoid undue hardship to the female litigants.

5. Heard.

6. A two Judge Bench of the Hon'ble Supreme Court dealt with the power of the Court to transfer proceedings under Sections 24 and 25 of the Civil Procedure Code in ***Kulwinder Kaur @ Kulwinder Gurcharan Singh Vs. Kandi Friends Education Trust AIR 2008 SC 1333*** wherein it was held that the power to make such transfers is discretionary in nature and hence, it would be unwise to attempt

to shackle it with a blanket formula uniformly applicable to all situations. However, it cannot be denied that the power must be used with abundance of care and caution. Further a three Judge Bench of the Hon'ble Supreme Court in ***Gana Saraswathi Vs. H. Raghu Prasad (2000) 10 SCC 277*** had observed that in the interest of justice, the doctrine of *forum non conveniens* can also be extended to matrimonial proceedings. It was stated that Courts usually allow transfer petitions in such cases to ensure that the wife does not suffer on account of not being able to participate in the proceedings.

7. A two Judge Bench of the Hon'ble Supreme Court in ***N.C.V. Aishwarya Vs. A.S. Saravana Karthik Sha 2022 SCC OnLine SC 1199*** 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 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.”

8. In the present case, the petitioner has to look after a child of about 4 years and she does not have good health as is evident from the medical record (Annexure P-2). Furthermore, distance of Pathankot from Dera Bassi is more

than 250 kms, which takes 5-6 hours to travel each side and therefore, it would cause immense hardship to the petitioner, much less, she will have to bear the transportation expenses to attend the court proceedings on each and every date.

8. In view of the law settled by the Hon'ble Supreme Court in *Sumita Singh's case (supra)*, *Rajani Kishor Pardeshi case (supra)* and *N.C.V. Aishwarya's case (supra)*, the present petition is allowed *in limine*, in order to curtail the cost of litigation of respondent No.2. Resultantly, CHI/397/2023 titled as *State of Punjab Vs. Rajeshwar Singh* (Annexure P-1) pending before the learned Judicial Magistrate 1<sup>st</sup> Class, Pathankot is ordered to be transferred to the jurisdiction of the learned Judicial Magistrate 1<sup>st</sup> Class, Dera Bassi (Punjab).

9. The District & Sessions Judge, Pathankot is directed to transfer the record pertaining to the aforesaid case to the District Court, SAS Nagar (Mohali) and the District & Sessions Judge, SAS Nagar, Mohali will assign the said petition to the competent court of jurisdiction at Dera Bassi. Parties are directed to appear before the trial Court on 22.03.2024.

10. However, before parting with this order, liberty is granted to the respondent No.2 to revive this petition if he intends to contest the instant petition, subject to the following terms:-

(a) Respondent No.2 will clear all arrears of maintenance, if any, in terms of the petition filed by the petitioner under Section 125 Cr.P.C. or in any other proceedings.

(b) Respondent No.2 will undertake on affidavit to pay the expenses of transportation availed by the petitioner to attend the court proceedings at Pathankot and Rs.500/- as diet charges for each and every date of hearing.

(c) Respondent No.2 will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Pathankot, in case the respondent opt to contest this petition.

(HARPREET SINGH BRAR)  
JUDGE

March 04, 2024  
Pankaj\*

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| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |