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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18116-2024 (O&M)
Date of decision: 15.04.2024

Pankhuri Rao

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vikas Malik, Advocate (legal aid counsel) and
Ms. Komal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 407 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') read with Section 482 Cr.P.C. seeking transfer of criminal proceedings arising out of FIR No.57 dated 05.04.2022 under Sections 406 & 498-A of IPC, registered at Police Station Division No.4, District Patiala, CHI/956/2022 dated 21.12.2022 titled as '*State of Punjab Vs. Munish Kumar*' from the Court of learned Judicial Magistrate 1st Class, Patiala to the competent Court of jurisdiction at Moonak, District Sangrur.
2. Learned counsel for the petitioner, *inter alia*, contends that the

petitioner is presently residing with her parents at Moonak, District Sangrur and is having no source of income. It is further contended that distance between Moonak, District Sangrur and Patiala is about 80 kms and as such, it is very difficult for her to travel to Patiala to pursue the aforesaid proceedings.

3. 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.

4. At this stage, Mr. Dhaman Preet Singh Bajwa, Advocate has filed Power of Attorney on behalf of respondent No.2, which is taken on record. He has opposed the prayer for transfer of the aforementioned case from the Court of learned Judicial Magistrate 1st Class, Patiala to the competent Court of jurisdiction at Moonak, District Sangrur.

5. Heard.

6. A two Judge Bench of the Hon'ble Supreme Court dealt with 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 no source of income and is fully dependent on her parents. Furthermore, distance between Patiala and Moonak, District Sangrur is about 80 kms 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.

9. In view of the law settled by the Hon'ble Supreme Court in ***Sumita Singh***'s case (supra), ***Rajani Kishor Pardeshi***'s case (supra) and ***N.C.V. Aishwarya***'s case (supra), present petition is allowed. Resultantly, criminal proceedings arising out of FIR No.57 dated 05.04.2022 under Sections 406 & 498-A of IPC, registered at Police Station Division No.4, District Patiala, CHI/956/2022 dated 21.12.2022 titled as '*State of Punjab Vs. Munish Kumar*', pending in the Court of learned Judicial Magistrate 1st Class, Patiala are ordered to be transferred to the competent Court of jurisdiction at Moonak, District Sangrur. The District Judge, Patiala is directed to transfer the record pertaining to the aforesaid case to the District

Judge, Sangrur, who will assign the said petition to the competent Court of jurisdiction at Moonak. The parties are directed to appear before the learned trial Court within a period of 30 days from today.

10. However, before parting with this order, liberty is granted to 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 Patiala 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 Patiala, in case the respondent opt to contest this petition.

15.04.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No