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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-27249-2024 (O&M)
Date of decision: 28.05.2024

Gurbax Kaur and another

... Petitioners

Vs.

Baljinder Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Payel Mehta, Advocate (legal aid counsel)
for the petitioners.

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 petition under Section 125 Cr.P.C. bearing case No.MNT125/21/2023 CNR No.PBMO010013332023 titled as '*Gurbax Kaur and another Vs. Baljinder Singh*' from the Court of learned Family Court, Moga to the competent Court of jurisdiction at Jalandhar.
2. Learned counsel for the petitioners, *inter alia*, contends that marriage between petitioner No.1 and the respondent was solemnized on 25.05.2009 according to Sikh rites and rituals and out of this wedlock, one



female child i.e. petitioner No.2 was born. Due to giving birth to a female child, as they were expecting a male child, the respondent and his family members turned out petitioner No.1 from her matrimonial home and since that day, the respondent did not pay any maintenance to her. Having left with no other option, the petitioners filed a petition under Section 125 Cr.P.C. (*supra*) seeking maintenance before learned Family Court, Moga. It is further contended that petitioner No.2 is a school going child and presently, the petitioners are residing at Jalandhar and the distance between Jalandhar and Moga is 120 kms and as such, it is very difficult for petitioner No.1 to travel to Jalandhar to pursue the petition under Section 125 Cr.P.C. at the District Court, Moga.

3. Further, learned counsel for the petitioners 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. Heard.

5. A two Judge Bench of the Hon'ble Supreme Court dealt with power of the Court to transfer proceedings under Sections 24 & 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.

6. 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.”

7. In the present case, petitioner No.1 has to look after the child aged about 13 year, who is residing with her. Furthermore, distance of Moga from Jalandhar is 120 kms and therefore, it would cause immense hardship to petitioner No.1, 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***'s case (*supra*) and ***N.C.V. Aishwarya***'s case (*supra*), present petition is allowed. Resultantly, petition under Section 125 Cr.P.C. bearing case No.MNT125/21/2023 CNR No.PBMO010013332023 titled as '*Gurbax Kaur and another Vs. Baljinder Singh*' pending in the Court of learned Principal Judge, Family Court, Moga is ordered to be transferred to the jurisdiction of District and Sessions Judge, Jalandhar. The District Judge, Moga is directed to transfer the record pertaining to the aforesaid case to the District Judge, Jalandhar, who will



assign the said petition to the competent Court of jurisdiction at Jalandhar. The parties are directed to appear before learned Family Court within a period of 30 days from today.

9. However, before parting with this order, liberty is granted to the respondent to revive this petition, if he intends to contest the instant petition, subject to the following terms:-

- (a) The respondent will clear all arrears of maintenance, if any, in terms of the petition filed by the petitioners under Section 125 Cr.P.C. or in any other proceedings.
- (b) The respondent will undertake on affidavit to pay the expenses of transportation availed by the petitioners to attend the Court proceedings at Moga and Rs.500/- as diet charges for each and every date of hearing.
- (c) The respondent will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioners to pursue the case at Moga, in case the respondent opt to contest this petition.

28.05.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No