



**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH**

**Sr. No.203****TA-550-2022****Date of Decision: 05.09.2024****NIMISHA MITTAL****....Applicant****Versus****LOKESH KUMAR****.....Respondent****CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI**

Present:- Mr. Vansh Malhotra, Advocate  
for the applicant.

Mr. Daman Jeet Bhoriwal, Advocate  
for the respondent.

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**ARCHANA PURI, J. (Oral)**

The applicant-wife has filed the present application for seeking transfer of the petition under Section 13 of the Hindu Marriage Act i.e. DMC/1354/2021, titled '*Lukesh Kumar Vs. Nimisha Mittal*', filed by the respondent-husband, pending in Family Court Bathinda and she seeks transfer of the same to the Court of competent jurisdiction at SAS Nagar.

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 marriage between the parties had taken place on 18.05.2019. Though, it was a love marriage, but it went on rocks, on account of bad conduct of the respondent. The applicant has already filed petition under



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Section 125 Cr.P.C., which is pending in the Courts at SAS Nagar. However, the respondent did not make appearance in the same and now, the case is fixed for *ex parte* evidence. Also further, it is submitted that after filing of the present transfer application, the petition under the Protection of Women from Domestic Violence Act, has also been filed by the applicant and the same is at the stage of summoning of the respondent. The applicant is not having any source of earning and in the given circumstances, it is submitted that it is difficult for her to defend the divorce petition, from a distance of about 220 kilometres, from the place of her residence. As such, a prayer has been made for acceptance of the transfer application.

On the contrary, the counsel for the respondent has submitted that the transfer application has been filed, barely after 30 days of filing of the petition under Section 125 of Cr.P.C. Also, it is submitted that the allegations levelled against the respondent are false. In the given circumstances, the counsel for the respondent has made a prayer for dismissal of the application.

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.

Adverting to the case in hand, suffice to consider that, on account of matrimonial discord, the parties are residing separate. The petition under Section 125 Cr.P.C. was filed by the applicant, in which, despite service, the respondent has not made appearance and the said petition is now pending for *ex parte* evidence. Even, another petition, allegedly filed by the applicant under the Protection of Women from Domestic Violence



Act, is also pending in the Courts at SAS Nagar.

In the light of the above, more particularly, considering the convenience of the wife to be given a priority, in a matrimonial dispute, so far as the transfer applications are concerned, the application is accepted and the petition under Section 13 of the Hindu Marriage Act i.e. DMC/1354/2021, titled '*Lukesh Kumar Vs. Nimisha Mittal*', filed by the respondent-husband, stands transferred from Family Court Bathinda, to the Court of competent jurisdiction at SAS Nagar. The requisite record of the aforesaid case be sent by Family Court Bathinda, to the District and Sessions Judge, SAS Nagar.

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

05.09.2024  
Himanshu

(ARCHANA PURI)  
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No