



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

103

TA-603-2024

Date of Decision: 10.05.2024

Dimpal

...Petitioner

Versus

Vijaypal

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Rajeev Dev Sharma, Advocate,
for the petitioner.

VIKAS SURI, J.

1. Prayer in this application under Section 24 of the Code of Civil Procedure, 1908, preferred by the petitioner-wife is for transfer of the petition under Section 13 (1)(i-a) of the Hindu Marriage Act, 1955 (for short 'the Act'), filed by the respondent-husband, registered as HMA-8317-2023, pending before the learned Principal Judge, Family Court, Gurugram, Camp at Pataudi, to a Court of competent jurisdiction at Rewari.

2. Learned counsel for the petitioner submits:-

- i) That the marriage of the parties was solemnized on 10.12.2018 as per Hindu rites and ceremonies.
- ii) That from the wedlock, one male child was born on 18.01.2020, who is in the custody and care of the petitioner-wife.
- iii) That on 22.09.2021, the petitioner was turned out from the matrimonial home by the respondent and his family members

and since then, she is residing with her parents.

- iv) That the proceedings arising out of petitions,
 - (a) under Section 125 Cr.P.C. (pending for 04.06.2024),
 - (b) Complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (Pending for 28.05.2024), and
 - (c) Case FIR No.73, dated 27.06.2022, under Sections 323, 406 and 498-A IPC, registered at Women Police Station Rewari,filed/registered at the behest of petitioner-wife, are pending in the Courts of competent jurisdiction at Rewari.
- v) That the respondent-husband has already put in appearance in the aforesaid proceedings and in the FIR case, charges were framed on 31.08.2022 and the respondent is facing trial.
- vi) That the above captioned petition has been filed by the respondent-husband only to harass the petitioner-wife.
- vii) That the petitioner has no independent income and would have to face extreme hardship to travel from Rewari to the Courts at Pataudi with four year old child, on each and every date, whereas the respondent-husband is already appearing in the matrimonial litigation pending before the Family Court at Rewari.

3. I have heard learned counsel for the petitioner and gone through the material available on record.

4. Besides the facts noticed hereinabove, the legal position in such like cases as the present one, is well established. In this regard, reference to judgment of the Hon'ble Supreme Court rendered in ***N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha***, AIR 2022 SC 4318, would be apposite, wherein the Apex Court 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 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 socioeconomic 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.”

5. Further reliance can be placed upon the judgments in ***Sumita Singh vs Kumar Sanjay***, AIR 2002 SC 396 and ***Rajani Kishor Pardeshi vs. Kishor Babulal Pardeshi***, (2005) 12 SCC 237, wherein the Hon’ble Supreme Court has observed that “while deciding the transfer application, the Courts are required to give more weightage and consideration to the convenience of the female litigants and transfer of legal proceedings from one Court to another should ordinarily be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships.”

6. In the light of the conspectus of the law laid down by the Apex Court, this Court is of the view that while adjudicating a transfer petition initiated by the wife in the context of a matrimonial dispute, the Court must take into account a comprehensive array of the following factors:-

(a) Economic condition and earning capacity of the parties,



i.e. husband and wife;

- (b) Social standing of the wife and her dependency;
- (c) Custody of children;
- (d) Educational needs of the children, if any;
- (e) Physical well-being of the parties concerned;
- (f) Pending litigation(s) between the parties including criminal cases, if any;
- (g) Accessibility from the location where the wife resides to the Court where the case is pending;
- (h) Availability of convenient commuting options and its periodicity.

Undoubtedly, only a harmonious consideration of all the above vital aspects would ensure a just and equitable decision in such cases.

7. Thus, applying the principles of law laid down by the Apex Court in *N.C.V Aishwarya's case* (supra), *Sumita Singh's case* (supra) and *Rajani Kishor's case* (supra), this Court deems it appropriate to allow the present petition, by issuing the following directions:-

- (i) Petition under Section 13(1)(i-a) of the Act filed by the respondent-husband, registered as HMA-8317-2023, pending before the learned Principal Judge, Family Court, Gurugram, Camp at Pataudi, is transferred to a Court of competent jurisdiction at Rewari.
- (ii) The learned District Judge, Gurugram, is directed to transfer complete record pertaining to the aforesaid case to learned District Judge, Rewari.
- (iii) The parties through their counsel are directed to appear before the learned District Judge, Rewari, on **30.05.2024**.



- (iv) The learned District Judge, Rewari, will assign the said petition to the Court of competent jurisdiction.
- (v) The concerned Court at Rewari, shall diligently strive to amicably resolve the marital discord between the parties by referring the matter to the Mediation and Conciliation Centre.

8. However, liberty is granted to the respondent to revive this petition, if he intends to contest the same, provided that:-

- (a) The respondent will clear all arrears of maintenance amount, if any, in terms of any petition filed by the petitioner either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.
- (b) The respondent will file an affidavit undertaking to pay Rs.1000/- per day, to the petitioner for attending the Court proceedings at Family Court Gurugram, Camp at Pataudi, on each and every date of hearing.
- (c) The respondent will bring a demand draft of Rs.25,000/-, drawn in favour of petitioner, towards the litigation expenses to pursue the case at Pataudi, in case the respondent opts to contest this petition.

9. I am supported by the decisions rendered by a co-ordinate Bench of this Court in **TA No. 1315/2022**, titled as *Rohini Arora vs. Nitin Talwar*; and **TA No. 1322 of 2022**, titled as *Jaswinder Kaur vs. Gurvinder-jeet Singh*. Even this Court has followed the aforesaid principle of law in **TA-610-2023**, titled as *Hemal vs. Manuvrat*; and **TA-406-2024**, titled as *Meena Rani vs. Surinder Pal Dass*.



- 10. The present petition is disposed of accordingly. Pending applications, if any, also stand disposed of.
- 11. Copy of this order be sent to both the learned District Judges concerned, for information and necessary compliance.

May 10, 2024
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(VIKAS SURI)
JUDGE

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