

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

CRM-M-24589-2024
Date of decision: 22.08.2024

....Petitioner

Versus

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sahil Gambhir, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

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 case titled as 'State of Haryana Vs. Vikram Singh etc.' (CHI/176/2021) registered vide FIR No.58 dated 05.03.2021 under Sections 323/354/406/498-A/506 of IPC registered at Police Station Chhachhrauli (Annexure P-1) from the Court of learned Judicial Magistrate 1st Class, Bilaspur, District Yamuna Nagar to the competent Court of jurisdiction at District Ludhiana.

2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner is living in Ludhiana along with her minor daughter. It is further contended that the distance between Bilaspur, District Yamunanagar and Ludhiana is 200 km and as such, it is very difficult for her to travel to Bilaspur, District Yamunanagar to pursue the case in question.

3. Further, learned counsel for the petitioner relies upon the judgments rendered by the Hon'ble Supreme Court in ***Sumita Singh Vs.***



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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, Nirmal Singh, Advocate has filed *vakalatnama* on behalf of respondents No.2 to 6, 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, Bilaspur, District Yamuna Nagar to the competent Court of jurisdiction at District Ludhiana.

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 to look after her minor daughter, who is residing with her. Furthermore, distance of Bilaspur, District Yamunanagar from Ludhiana is 200 km 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.



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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, case titled as '*State of Haryana Vs. Vikram Singh etc.*' (CHI/176/2021) registered vide FIR No.58 dated 05.03.2021 under Sections 323/354/406/498-A/506 of IPC registered at Police Station Chhachhrauli (Annexure P-1) is ordered to be transferred to the jurisdiction of District and Sessions Judge, Ludhiana. The District and Sessions Judge, Yamuna Nagar is directed to transfer the record pertaining to the aforesaid case to the District Judge, Ludhiana, who will assign the said case to the competent Court of jurisdiction at Ludhiana. The parties are directed to appear before the learned trial Court within a period of 30 days from today.

However, keeping in view the fact that respondents No.3 to 6 are family members of the husband of the petitioner and the distance between Yamuna Nagar and Ludhiana is 180 km, therefore, attending trial on each and every date would cause great hardship and inconvenience to them as well as affect their livelihood and thus, the personal appearance of respondents No.3 to 6 before the learned trial Court is ordered to be exempted in view of the ratio laid down by this Court in CRM-M-25963-2023 titled as '*Suresh Kumar and another Vs. The State of Haryana and another*' 2023 (2) Law Herald 1498, subject to the following conditions:-

- i) respondents No.3 to 6 shall be represented through their counsel;
- ii) shall not delay/stall the trial proceedings;
- iii) shall not dispute their identity as accused;
- iv) shall have no objection if the prosecution evidence is recorded in their absence but in the presence of their

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- counsel;
- v) shall appear before the trial Court as and when required;
and
- vi) any other condition, which the trial Court may impose.

(HARPREET SINGH BRAR)
JUDGE

22.08.2024
Neha

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