



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

Sr. No.223

TA-656-2024

Date of Decision: 31.07.2024

PINKI

....Applicant

Versus

NAVEEN

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Sandeep Yadav, Advocate
for the applicant.

ARCHANA PURI, J. (Oral)

Mr. Paramvir Singh Parmar, Advocate, has made appearance on behalf of the respondent and filed Power of Attorney, which is taken on record. Even, reply has been filed and the same is also taken on record.

The applicant-wife has filed the present application for seeking transfer of the petition under Section 13 of the Hindu Marriage Act i.e. HMA/795/2023, titled '*Naveen Vs. Pinki*', filed at the instance of respondent-husband, which is pending in the Family Court Gurugram, to the Court of competent jurisdiction at Rohtak.

In pursuance of the notice issued, respondent has made appearance through counsel.

Learned counsel for the applicant-wife heard.

At the very outset, it is submitted by learned counsel for the applicant that one daughter born from the wedlock of the parties to the lis, is



in the care and custody of the applicant. The applicant has got lodged an FIR bearing No.316 dated 09.12.2021, under Sections 323, 406, 498-A, 506 and 34 IPC at Police Station Bahuakbarpur, District Rohtak. Even, the applicant has filed petition under the Protection of Women from Domestic Violence Act, petition under Section 9 of the Hindu Marriage Act, as well as petition under Section 125 Cr.P.C. and all the said proceedings are going on in the Courts at Rohtak. However, it is submitted that the divorce petition has been filed by the respondent/husband, solely as a counter-blast to the litigation initiated at the instance of the applicant. In the given circumstances, a prayer has been made for transfer of the case, pending in Family Court Gurugram, to the Court of competent jurisdiction at Rohtak, as it is submitted that it is difficult for the applicant to defend the divorce petition, at a distance of 90 kilometres, from the place of her residence, more particularly, taking into consideration the fact of minor daughter living with her.

On the other hand, learned counsel for the respondent has submitted that it was on account of the conduct of the applicant, that the respondent was forced to file the divorce petition. Even, the FIR lodged at the instance of the applicant is based on wrong and concocted facts. Also, it is submitted by learned counsel for the respondent that the mother of the respondent is undergoing treatment for multiple ailments since 08.07.2023, at Base Hospital, Delhi Cantonment.

In view of the submissions made aforesaid, it is pertinent to mention that even though, in the reply, it is stated that the mother of the respondent is suffering from multiple ailments, but no document, as such, in support of this assertion, has been brought on record.



At this juncture, 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.

Considering the submissions made by learned counsel for the applicant and the various circumstances, as spelt out from the application, more particularly considering the fact of minor daughter residing with the applicant, the application, as such, is hereby accepted and the petition under Section 13 of the Hindu Marriage Act i.e. HMA/795/2023, titled '*Naveen Vs. Pinki*', filed at the instance of the respondent-husband, stands transferred from the Family Court Gurugram, to the Court of competent jurisdiction at Rohtak. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court, Gurugram to District and Sessions Judge, Rohtak.

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

31.07.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No