



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

Sr. No.139

TA-945-2023

Date of Decision: 09.08.2024

ANJU BALA

....Applicant

Versus

MANGAT RAI JINDAL

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Ishan Gupta, Advocate
for the applicant.

Mr. Yagsimant Attri, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant/wife/mother has filed the present application for seeking transfer of the petition under Section 25 of the Guardians and Wards Act, 1890, i.e. GW/15/2023, titled '*Anju Bala Vs. Mangat Rai Jindal*', filed at her instance, pending in the Family Court (Camp Court) Sunam, District Sangrur, to the Court of competent jurisdiction at Sangrur.

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

Learned counsel for the parties heard.

It is submitted by learned counsel for the applicant that the marriage between the parties to the lis, had taken place on 28.01.2012 and from this wedlock, one son, namely, Vahin Jindal was born on 15.09.2014. However, on account of matrimonial discord, the parties are residing separate and the custody of the son is with the respondent, since 08.10.2022.

While making reference to paragraphs No.2.3 and 2.4 of the application, the



reason for bitterness prevailing between the parties has been pointed out by learned counsel for the applicant. Therein, the applicant asserts about the respondent to be a Gay, as a result whereof, the relations were spoiled between them. Also, it is pointed out by the counsel for the applicant that an FIR bearing No.25 dated 24.02.2023, under Sections 406 and 498-A IPC, was got lodged by the applicant at Police Station Longowal, against the respondent and the proceedings are pending before learned Illaqa Magistrate, Sangrur. Even, the husband has filed petition under Section 13 of the Hindu Marriage Act, for seeking divorce and the said case is also pending in the Family Court, Sangrur. However, the applicant had filed the petitioner under Section 25 of the Guardians and Wards Act, for seeking custody of the minor son, before District Court, Sangrur, which was entrusted to Principal Judge, Family Court, Sangrur, where the divorce petition was already pending. Thereafter, an application under Order 7 Rule 10(1) CPC, copy whereof is Annexure P-4, was filed by the respondent, for return of the petition for want of jurisdiction. However, on the basis of the reference made by the Court, which dealt with the matter, the petition under Section 25 of the Guardians and Wards Act, was transferred by the concerned District Judge to Family (Camp Court) Sunam, vide order dated 21.07.2023.

Further, it is submitted by the counsel for the applicant, that the mother of the applicant is suffering from age related ailments. Also, the applicant has already paid for her litigation at Sangrur. On this account, by virtue of transfer of the case, it would subject her to grave financial hardship. As such, a prayer has been made for transfer of the petition under Section 25 of the Guardians and Wards Act, pending at Family Court (Camp Court),



Sunam, District Sangrur, to the Court of competent jurisdiction at Sangrur.

On the other hand, learned counsel for the respondent, while making reference to the reply filed by way of affidavit of the respondent, has submitted that, in fact, the applicant is a government employee and earning Rs.70,000/- per month. Furthermore, also it is submitted that it has been falsely stated that the father of the applicant is suffering from age related ailments. Moreover, while making reference to the death certificate of the father of the applicant, copy whereof is Annexure R-1, it is submitted that the applicant is misleading the Court with the false statement, as father of the applicant had expired on 11.08.2021.

Further, learned counsel for the respondent submits that the minor child is residing and studying at Sunam. Therefore, Family Court, Sunam, is the proper jurisdiction. Also, it is submitted that the applicant is pursuing his job at Satoj, which is 21 kilometres from Sunam and Sangrur, where the applicant wants the case to be transferred, is at a distance of 36 kilometres from Satoj. The applicant is residing at Longowal, which is 16 kilometres from Sunam and 25 kilometres from Sangrur, where she seeks the case to be transferred. As such, it is pleaded by the counsel for the respondent that Family Court, Sunam, would be the more convenient place, even to the applicant, as it is in proximate from the place of her job, as well as her residence.

Also, it is submitted that in the petition under Section 13-B of the Hindu Marriage Act, filed for seeking divorce by mutual consent, the applicant had agreed that she will not claim the custody of the child, in any way. However, the same was dismissed by learned Family Court, on account of petition, having filed before expiry of one year.



Besides the aforesaid, it is submitted by the counsel for the applicant that, at earlier time also, the applicant had managed to seek transfer of the petition under Section 13 of the Hindu Marriage Act, from Sangrur to Sunam, while making false assertions about the criminal case, titled '*State of Punjab Vs. Mangat Rai Jindal*', between the parties, to be pending at Sunam, even though, the same is pending before Judicial Magistrate, Sangrur. In this regard, learned counsel has placed on record, the copy of petition i.e. CR-7547-2023, as well as copies of various orders passed by learned Trial Court, which were under challenge in the said revision petition and also the order dated 14.12.2023, passed by this Court, whereby, the operation of the order, with regard to transfer of the divorce petition, had been stayed. In these circumstances, it is submitted that no case is made out for transfer of the petition under Section 25 of the Guardians and Wards Act.

In view of the submissions made 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.

In this backdrop, advertng to the case in hand, it is pertinent to mention that the child born from the wedlock of the parties, is in the custody of the respondent. On account of matrimonial discord, there are three cases pending. One relating to the petition filed under Section 25 of the Guardians and Wards Act, qua which, the present application has been filed. This case is pending before Family Court (Camp Court) Sunam, District Sangrur. The said petition was initially filed by the applicant at Sangrur. However, in pursuance of the reference made by learned Family Court, Sangrur, on the aspect of jurisdiction, the same was transferred to Family Court (Camp



Court) Sunam, District Sangrur, vide order dated 21.07.2023. However, the applicant has filed the present application for seeking transfer of the same, again back to Sangrur.

Besides the aforesaid, there is divorce petition filed by the respondent-husband, which is still pending in the Courts at Sangrur. Relating to this petition, it is important to make mention that the transfer application was filed at the instance of the respondent, before District Judge, Sangrur. In the application, it was averred that the criminal case under Section 406 and 498-A IPC, is pending before Family Court, Sunam and Family Court, Sunam, is suitable to both the parties. It was on this account, vide order dated 20.10.2023, the order of transfer of the case to Family Court (Camp Court) Sunam, was passed by learned District Judge, Sangrur. However, feeling aggrieved with this order, the applicant had filed CR-7547-2023 before this Court. A copy of the revision petition has been placed on record, in which operation of the impugned order dated 20.10.2023, has been stayed by this Court.

It is pertinent to mention that to substantiate her plea that the criminal case was not pending before Family Court, Sunam, but it is pending before Courts at Sangrur, the counsel for the applicant has also placed on record copy of the order dated 17.11.2023. Perusal of the order dated 17.11.2023 reveals about the challan to have been presented before Judicial Magistrate Ist Class, Sangrur, meaning thereby, the case was pending before the Courts at Sangrur.

Besides the aforesaid also, learned counsel for the respondent has made reference to the petition under Section 13-B of the Hindu Marriage Act, filed at earlier instance by both the applicant, as well as the respondent



TA-945-2023

and has emphasized upon the recital made therein, that the custody of the minor child shall remain with petitioner No.1 (respondent in the present application) and petitioner No.2 (applicant in the present application), will not claim the custody of the minor son, from petitioner No.1/respondent, in any way, or through Court. May it be so, but however, suffice to make mention that the said petition under Section 13-B was returned back premature, on account of having been filed before expiry of one year period.

Even, in the reply, the respondent has mentioned that the applicant is pursuing her job at Satoj, which is 21 kilometres from Sunam and 36 kilometres from Sangrur. Moreover, the applicant is residing at Longowal, which is 16 kilometres from Sunam and 25 kilometres from Sangrur. On the basis of this distance, it has been asserted that learned Family Court, Sunam, is very convenient place for the applicant, being in proximity from the place of her job, as well as residence. However, it is so asserted by the respondent only. This in itself is not sufficient to be considered, singularly.

The distance between the two places, where the case is sought to be transferred and where it is already pending, is to be considered keeping in view the fact, as to whether it shall be convenient for the applicant or not. It is true, not all the times, convenience of the woman, as such, is to be taken into consideration for the matters relating to transfer of matrimonial cases. It is not a thumb rule. Facts and circumstances, as spelt out from various other material, coming forth, ought to be taken into consideration.

In this backdrop, as already observed aforesaid, it is pertinent to mention that on wrong projection of the criminal case, being pending in the Courts at Sunam, the respondent/husband/father, had obtained the transfer of



order, relating to the divorce petition, which has since been stayed by this Court. This conduct is also not appropriate, on the part of the respondent.

Taking into consideration all the facts and circumstances, as detailed aforesaid, the present application, is hereby accepted and the petition under Section 25 of the Guardians and Wards Act, 1890, i.e. GW/15/2023, titled '*Anju Bala Vs. Mangat Rai Jindal*', filed at the instance of applicant/wife/mother, stands transferred from the Family Court (Camp Court) Sunam, to the Court of competent jurisdiction at Sangrur. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court (Camp Court), Sunam, to District and Sessions Judge, Sangrur.

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

09.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

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