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214 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 20.05.2024

KRISHNA DEVI

....PETITIONER

Versus

MADAN LAL

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dushyant Godara, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 407 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') read with Section 482 Cr.P.C. seeking transfer of petition under Section 125 Cr.P.C. bearing case No.MNT125/18/2023 (PBFZF3000121-2023) titled as '***Madan Lal Versus Krishna Devi***' filed by respondent against the petitioner pending in the Court of Principal Judge, Family Court, Guruharsahai, District Ferozepur to any other Court of Competent Jurisdiction at Ambala (Haryana).

2. Learned counsel for the petitioner *inter alia* contends that respondent is the ex-husband of the petitioner as the marriage between the petitioner and respondent has already been dissolved under Section 13 of Hindu Marriage Act by way of decree of divorce on 08.11.2011 by the Court of learned Additional Sessions Judge, Ambala and the petitioner has been re-married to one Parveen Arora in the year 2012 and the said marriage was registered with Marriage Registrar Nagar Nigam, Ambala Zone on 11.06.2012.

It is further contended that now after 12 years of annulment of marriage and said decree of divorce, the respondent has filed a false and frivolous



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maintenance application under Section 125 of Cr.P.C. against the petitioner bearing case No. Mnt125/18/2023 in the Court of Principal Judge, Family Court at Guruharsahai, District Ferozepur for grant of maintenance to him from the petitioner. Learned counsel further contends that husband cannot file application under Section 125 Cr.P.C. against the wife as there is no such provision, however, now the respondent is not even the husband of the petitioner and the said petition is not maintainable. Moreover, the petitioner is serving as a private school teacher at Brara in District Ambala and distance between Ambala Cantt. and Guruharsahai is about 300 kms and as such, it is very difficult for her to travel to Guruharsahai to pursue the petition under Section 125 Cr.P.C. at the Family Court, Guruharsahai.

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

5. On 10.08.2023, following order was passed by a Co-ordinate Bench of this Court:

"1. *Petitioner is seeking transfer of the application for grant of maintenance under Section 125 Cr.P.C bearing case N0.Mnt125/18/2023 titled as 'Madan Lal Versus Krishna Devi' pending in the Court of learned*



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Principal Judge, Family Court, Ferozepur (Camp at Guruharsahai) to any other Court of Competent Jurisdiction at Ambala.

2. *Learned counsel for the petitioner submits that at the earlier instance, the marriage of the petitioner was solemnized with the respondent and the same was dissolved by a decree of divorce under Section 13-B of Hindu Marriage Act in terms of judgment dated 08.11.2011 passed by the Court of learned Additional District Judge, Ambala. Subsequently, the petitioner has solemnized marriage with Parveen Kumar in the year 2012 and is presently residing in her matrimonial house at Ambala. The petition under Section 125 Cr.P.C at the instance of the respondent who is ex-husband of the petitioner may not be even maintainable.*

3. *Notice of motion, returnable fro 08.11.2023.*

4. *Meanwhile, the proceedings qua the petitioner in the learned Family Court shall remain stayed.”*

6. Office report indicates that respondent has been duly served.

However, there is no representation on his behalf. As such, this Court has no other option, than to decide the case on merits.

7. 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 nonconveniens 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



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suffer on account of not being able to participate in the proceedings.

8. 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.”

9. In the present case, distance of Ambala Cantt to Guruharsahai is 300 kms approximately and therefore, it would cause immense hardship to the petitioner, much less, petitioner will have to bear the transportation expenses to attend the Court proceedings on each and every date.

10. 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, petition under Section 125 Cr.P.C. bearing case No. No.MNT125/18/2023 (PBFZF3000121-2023) titled as '***Madan Lal Versus Krishna Devi***' pending in

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the Court of Principal Judge, Family Court, Guruharsahai is ordered to be transferred to the jurisdiction of District and Sessions Judge, Ambala. The District Judge, Ferozepur is directed to transfer the record pertaining to the aforesaid case to the District Court, Ambala, who will assign the said petition to the competent Court of jurisdiction at Ambala. The parties are directed to appear before the learned trial Court within a period of 30 days from today.

(HARPREET SINGH BRAR)

JUDGE

20.05.2024

Ajay Goswami

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No