



TA-969-2023 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.113

TA-969-2023 (O&M)
Date of Decision: 23.10.2024

JAYA MATTO

....Applicant

Versus

JOSHWA MASIH

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

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

Mr. Kanwaljeet Singh, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

CM-16468-CII-2024

The present application has been filed for placing on record the copy of the petition under Section 125 Cr.P.C., which is pending in the Courts at Hoshiarpur.

In view of the averments made in the application, same is allowed and the requisite document is taken on record.

Main case

The applicant-wife has filed the present application for seeking transfer of the petition under Section 9 of the Hindu Marriage Act i.e. HMA/171/2023, titled '*Joshwa Masih Vs. Jaya Mattoo*', filed by the respondent-husband, pending in the Family Court, Jalandhar and she seeks transfer of the same to the Court of competent jurisdiction at Hoshiarpur.

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



Learned counsel for the parties heard.

At the very outset, it is submitted by the counsel for the applicant that the marriage had taken place, between the parties to the lis, on 04.11.2022. However, on account of the matrimonial discord, they are residing separate. Then, in the month of March, 2023, the applicant became pregnant. The respondent and his family members forced the applicant to give birth to a baby boy and she was subjected to harassment, time and again. Also further, it is submitted that the applicant had filed a complaint against the respondent and his family members before Senior Superintendent of Police, Hoshiarpur, copy where of is Annexure P-3. However, the said complaint has been filed/closed by the police authorities.

It is submitted that the applicant is not having any independent source of earning and is totally dependent upon her mother, who is an aged person. Her father had also expired. In the meanwhile, after separation from the respondent, the applicant had given birth to a baby boy, who is about 1 year old. In the given circumstances, it is submitted that it is difficult for the applicant to defend the petition under Section 9 of the Hindu Marriage Act, from a distance of about 40-50 kilometres, from the place of her residence.

On the other hand, the counsel for the respondent, while making reference to the reply filed, resisted the claim for transfer of the case. Rather, he submits that the complaint got lodged by the applicant was enquired into by the Incharge, Women Cell, Hoshiarpur and the closure report has been filed by Deputy Superintendent of Police, Hoshiarpur, on 11.08.2023. In the given circumstances, the version of harassment caused to the applicant stands belied.

In view of the submissions aforesaid, beneficial reference is



TA-969-2023 (O&M)

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



TA-969-2023 (O&M)

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.

Now, advertng to the case in hand, it is pertinent to mention that the applicant is having 1 year old child. Also, she has no independent source of earning and is totally dependent upon her widow mother. Even though, it is submitted by the counsel for the respondent that in the complaint filed by the applicant before Women Cell, Hoshiarpur, closure report has been filed, but, may it be so, at this stage, the convenience/inconvenience of the parties concerned has to be taken into consideration, without advertng to the merits of the averments made.

Keeping in view the aforesaid fact situation, the application is accepted and the petition under Section 9 of the Hindu Marriage Act i.e. HMA/171/2023, titled '*Joshwa Masih Vs. Jaya Mattoo*', filed by the respondent-husband, stands transferred from the Family Court, Jalandhar, to the Court of competent jurisdiction at Hoshiarpur. The requisite record of the aforesaid case be sent by the Family Court, Jalandhar, to the District and Sessions Judge, Hoshiarpur.

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

(ARCHANA PURI)
JUDGE

23.10.2024
Himanshu

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