



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

Sr. No.104

TA-999-2023

Date of Decision: 06.08.2024

GURVINDER KAUR

....Applicant

Versus

GURJINDER SINGH

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Sourabh Singla Advocate
for the applicant.

Mr. Rajesh Duhan, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the divorce petition, filed at the instance of respondent-husband, pending in the Family Court (Camp Court) Samana, District Patiala and she seeks transfer of the same to the Court of competent jurisdiction at Jind.

In pursuance of the notice issued, respondent has made appearance through counsel. Even, reply has been filed in the Court today, which is taken on record.

Learned counsel for the parties heard.

At the very outset, it is submitted by learned counsel for the applicant that two children were born from the wedlock of the parties to the lis, namely, Harkirat Singh and Namanpreet Kaur, who are aged 14 years and 11 years, respectively. Both the said children are in the custody of the respondent. Even, the applicant has got lodged an FIR bearing No.140 dated 03.09.2023, under Sections 323, 34, 354-B, 377, 406, 498-A and 506 IPC, as



well as filed a petition under Section 12 read with Sections 17 to 23 of the Protection of Women from Domestic Violence Act, which are pending in the Courts at Jind. The applicant has no source of earning and she is totally dependent upon her brother. In these circumstances, it is submitted that it is difficult for the applicant to defend the divorce petition, while residing at a distance of 106 kilometres, from the Courts at Samana. As such, a prayer has been made for transfer of the case, pending at Family Court (Camp Court) Samana, District Patiala, to the Court of competent jurisdiction at Jind.

On the contrary, learned counsel for the respondent has resisted the claim for transfer of the divorce petition, as he submits that the children born from the wedlock of the parties to the lis, are of the age group, where they require the constant care. In the given circumstances, he makes a prayer for dismissal of the instant application.

In view of the submissions made aforesaid by the respective counsel, 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.

Now, advertng to the present case, even though, it is submitted by learned counsel for the respondent that the children are in the custody of the respondent, who require constant care, but however, the age of the children, as such, is also required to be taken into consideration and balancing the inconvenience caused to either party, it is necessary to note that the applicant is having no source of earning and is residing at a distance of 106 kilometres, from the place, where the divorce petition has been filed at the instance of the respondent-husband.



Considering the same and also considering the submissions made by learned counsel for the applicant and the various circumstances, as spelt out, the application, as such, is hereby accepted and the divorce petition, filed at the instance of respondent-husband, stands transferred from the Family Court (Camp Court) Samana, District Patiala, to the Court of competent jurisdiction at Jind. The requisite record of the aforesaid divorce petition shall be transferred by the Family Court (Camp Court), Samana, District Patiala, to District and Sessions Judge, Jind.

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

06.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No