

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

CRM-M-42855-2024
Date of decision: 31.08.2024

....Petitioner

Versus

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 447 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking transfer of case No. CHI-235-2019 and connected proceedings from the Court of learned Judicial Magistrate 1st Class, Bathinda to the competent Court of jurisdiction at District Court SAS Nagar, Punjab arising out of FIR No.0035 dated 21.07.2018 under Sections 498-A/406/109 of IPC registered at Police Station Women, District Bathinda.

2. Learned counsel for the petitioner *inter alia* contends that the accused after getting bail violated the conditions of bail, on account of which, the petitioner was forced to file an application for cancellation of bail which is pending before the learned Additional Sessions Judge, Bathinda. On 27.05.2024, counsel for the petitioner caused injuries to the petitioner and intimidated her in the Court premises and offence under Sections 323/506 of IPC was made out against him vide registered G.D. No.026 dated 28.05.2024 at Police Station Civil Lines, Bathinda (Annexure P-4). The petitioner also



CRM-M-42855-2024

-2-

informed the President, District Bar Association Bathinda, about the conduct of the counsel vide e-mail dated 19.07.2024 but no action has been taken against him and after registration of the complaint against the Advocate, she is unable to get a lawyer of her choice for assisting her in the prosecution of accused. He further submits that the petitioner is living at Zirakpur, Mohali and the distance between SAS Nagar, Mohali and Bathinda is 222 km approximately and as such, it is very difficult for her to travel to Bathinda to pursue the case in question and also it appears that all the lawyers have boycotted the petitioner.

3. Further, learned counsel for the petitioner 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. The learned State counsel submits that he has no objection to the case being transferred as the same would not cause any prejudice to the parties.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, this Court, in view of settled law, finds it appropriate to decide the present case in *limine* in order to save litigation cost and judicial time.

6. 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 non-conveniens 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 suffer on account of not being able to participate in the proceedings.

7. 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.”

8. In the present case, *inter alia*, the petitioner has no lawyer to represent her case at Bathinda since she has lodged a complaint against her earlier Advocate. Furthermore, distance of Bathinda from SAS Nagar, Mohali is 222 km and, therefore, it would cause immense hardship to the petitioner, much less, she will have to bear the transportation expenses to attend the Court proceedings on each and every date.

9. 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, case No. CHI-235-2019 and connected proceedings arising out of FIR No.0035 dated 21.07.2018 under Sections 498-A/406/109 of IPC registered at Police Station Women, District Bathinda pending in the Court of learned Judicial Magistrate 1st Class, Bathinda is ordered to be transferred to the jurisdiction of District and Sessions Judge, SAS Nagar, Mohali. The District Judge, Bathinda is directed to transfer the record pertaining to the aforesaid case to the District Court, SAS Nagar, Mohali, who will assign the said case to the competent Court of jurisdiction at SAS Nagar, Mohali. The parties are directed to appear before the learned trial Court within a period of 30 days from today, at SAS Nagar Mohali.

(HARPREET SINGH BRAR)
JUDGE

31.08.2024
Neha

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