

2024:PHHC:164925



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-55423-2022 (O&M)

Date of decision: 05.12.2024

Pooja ...Petitioner

V/s

State of Haryana and anotherRespondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Ms. Garima Modi, Advocate for
Mr.Ankur Lal, Advocate for the petitioner.
Ms. Mahima Yashpal, DAG Hayana.
Mr. Arun Kumar Goyat, Advocate for respondent No.2.

SUMEET GOEL, J.

1. The instant petition has been preferred by the petitioner under Section 407 of the Code of Criminal Procedure, 1973 for transfer of case/proceedings arising out of the FIR No.18 dated 19.01.2022 registered under Sections 323/498-A/506/34 of Indian Penal Code, 1860 at Police Station WPS Jhajjar, Haryana (hereinafter to be referred the ‘FIR in question’) pending before the JMIC, Jhajjar to a Court of competent jurisdiction at Hisar, Haryana.
2. The gravamen of the FIR in question pertains to the demand of dowry, harassment and cruelty being meted out to the complainant/petitioner by accused-respondent No.2 and hence an FIR *ibid* got registered by her. It is further alleged that the petitioner got married to respondent No.2 (herein) on 21.12.2020, in accordance with Hindu rites and customs. Despite marrying the respondent No. 2 against the wishes of her family and making

every effort to adjust to her marital life, the petitioner experienced a significant change in the attitude of respondent No.2 after the marriage. The petitioner further alleged that despite fulfilling all her responsibilities as a devoted Hindu wife, respondent No.2 refused to acknowledge her status as his wife, subjected her to cruelty, and ultimately forced her to leave her matrimonial home.

3. Learned counsel for the petitioner has iterated that the petitioner has been maltreated by the accused/respondent No.2 (herein) on which account she was constrained to have the FIR in question registered. It has been further iterated that the petitioner, currently residing in Hisar, has been rendered destitute due to the neglect of respondent No.2, who has failed to provide her with maintenance. According to learned counsel, given the financial hardship and her inability to travel frequently from Hisar to Jhajjar, the petitioner is unable to effectively pursue the proceedings arising out of the FIR in question which are currently pending before the Court of JMJC, Jhajjar. It is further submitted by the learned counsel that under Section 407 of the Cr.P.C., 1973, this Court has the jurisdiction to transfer the said proceedings to a Court of competent jurisdiction in Hisar. Furthermore, the petitioner, being a single woman with limited means, faces significant difficulty in travelling to Jhajjar to attend the proceedings. Learned counsel has emphasized that the respondent No.2 is already appearing in two other matter before the Courts in Hisar, and therefore, no undue prejudice or hardship would be caused to him if the proceedings of the instant FIR are transferred as sought. Learned counsel has further submitted that the cases emanating from matrimonial discord are to be considered sympathetically in

favour of the wife when a transfer petition is instituted at her instance. Therefore, it has been submitted that the instant petition be allowed and the trial emanating from the FIR in question be transferred from District Jhajjar, Haryana to a Court of competent jurisdiction at Hisar.

4. Learned State counsel has opposed the grant of instant petition by contending that it will be difficult to examine the official witnesses and to carry the record files from Jhajjar to Hisar. She has submitted that after the completion of investigation, report under Section 173 of Cr.P.C., 1973 has been submitted. According to her, there are total 08 prosecution witnesses, out of which 02 already stands examined and 03 have been given up. Furthermore, till date, no application/complaint regarding threat perception to the life and liberty of the petitioner by the respondent no.2 has been received by the police authorities. In these circumstances, the petitioner does not deserve any relief of transfer of the proceedings of the case or any other alternative relief from this Court and hence the present petition deserves to be dismissed.

5. No written reply has been filed on behalf of respondent No.2. However, learned counsel has vehemently opposed the petition by arguing that no cause is made out to transfer the petition as most of the witnesses are residents of Jhajjar and hence it will be inconvenient for them to repeatedly travel to Hisar to have their testimony(s) recorded. Learned counsel has further argued that there is no threat to the petitioner at Jhajjar and hence the instant petition be dismissed.

6. I have heard learned counsel for the rival parties and have perused the record.

7. A fair trial is a fundamental principle of the criminal justice system, ensuring justice for all the parties involved, including the accused, the witnesses and the public at large. It is essential to uphold the integrity of the judicial process when considering a request to transfer the trial proceedings. It would be apposite to refer herein to a judgment passed by this Court titled as ***Sonalika Garg vs. State of Punjab and others = 2024: PHHC:136390***, relevant whereof reads as under:

“13. More often than not, a plea for transfer of trial is primarily based upon the convenience of parties to trial and/or witnesses. The statutory mandate; as contained in Section 407 of Cr.P.C, 1973/Section 477 of BNSS, 2023; does prescribe for transfer of trial etc., on account of general convenience of parties or witnesses. This transfer jurisdiction of the High Court ought to be exercised sparingly. Ordinarily, the trial proceedings ought to be undertaken at its jurisdictional place as prescribed by law. The convenience of a party/witness ought not to be given a very liberal meaning lest it causes easy shifting of trial. The High Court must exercise caution to ensure that, the threshold for such transfers is not set too low, thereby preventing the justice system from being manipulated by baseless requests that could hinder the fair and efficient administration of justice.

*13.1 Further; the convenience has to be adjudged on the touchstone of relative convenience and difficulties of all the parties concerned in the process i.e. the accused, victim/complainant, witnesses and State (prosecution). In other words; the concept of convenience herein entails triangulation of comparative convenience of accused, victim/complainant and the Society at large (represented by State/prosecuting agency). The Hon'ble Supreme Court in the judgment of **Nahar Singh Yadav** (supra) has enunciated that comparative inconvenience and hardships likely to be caused to all concerned is a factor which should be borne in mind while considering a plea for transfer of trial. Indubitably, in FIR cases, the expenses and difficulties likely to be undertaken by the Investigating Officer, prosecution witnesses (which may include government doctors etc.) would also be a ground for consideration.*

14. *Of late, this Court has been receiving unremitting spate of plea(s) seeking transfer of trial proceedings in an FIR case under Section 498-A of the IPC (now Section 85 of BNS, 2023) relating to dowry harassment etc., primarily on account of convenience of the complainant/victim-wife. Indubitably, the convenience of the complainant/victim-wife is a key aspect to be considered but concurrently the relative convenience and likely hardship of the other stakeholders in the trial proceedings cannot be overlooked. The complainant/victim-wife, in a matrimonial related offence FIR, has a right to participate in the trial, in accordance with law, yet the State is the prime prosecuting agency in a FIR case. The Investigating Officer/Pairavi official of the FIR usually remains present in the Court on each and every date of hearing to assist the Public Prosecutor of the case. Further; there are Police officials, Government Doctors etc. cited as prosecution witnesses. Convenience nay comparative convenience of all the concerned is required to be taken into consideration while adjudicating a transfer plea. In matrimonial matters; such as petition for grant of divorce, petition for maintenance filed under Section 125 of Cr.P.C./Section 144 of BNSS, 2023; given the background of general socioeconomic paradigm in our society, wife's convenience in a transfer petition is required to be accorded pre-eminence and be considered at a higher pedestal. However, this principle cannot be said to be applicable with same vigour to FIR cases involving offence of Section 498-A IPC/Section 85 of BNS, 2023 etc. for the reason, firstly, matrimonial litigation such as a divorce petition is primarily between two individuals, namely husband and wife wherein the wife is required to independently and solely pursue her case; whereas in the FIR case it is the State/Police, which is the main prosecuting agency; secondly, the FIR case involves several of the official witnesses such as Police personnel, Government Doctors etc.*

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17. *As a sequitur to the above rumination, the following principles postulates:*

I. (i) *Transfer of trial/appeal etc.; exercising powers under Section 407 of Cr.P.C., 1973/Section 447 of BNSS, 2023; can be ordered for by the High Court in case it appears fair trial is not possible at the place where the trial/proceedings is pending.*

(ii) *The apprehension, of the fair trial being in peril, has to be based on tangible basis/material and not on any conjecture/surmise.*

(iii) *Before ordering for transfer of trial etc. the High Court ought to consider whether the situation (causing fair trial to be prejudiced) can be managed or resolved by taking any remedial step(s).*

II. *If an order passed by a Presiding Officer/trial Judge is found to be erroneous by a superior Court, this by itself cannot be presumed as such Presiding Officer/trial Judge being biased. Very strong/cogent material is pertinently required for ordering for transfer of trial etc on account of a Presiding Officer/trial Judge being biased.*

III. *The factum of non-applicant (in a transfer petition) being a lawyer himself or being in close relationship with a lawyer practicing in the Court where the trial is pending adjudication cannot be a ground, sufficient by itself, for shifting of trial. For such a transfer petition to succeed, the applicant (seeking transfer) is required to show discernible prejudice being caused or likely to be caused to such applicant (seeking transfer).*

IV. *General convenience of parties to trial or witnesses is a factor which may be considered for transfer of trial etc. However, it is not the convenience of one party alone but it is the comparative convenience of all concerned i.e. the accused, victim/complainant, witnesses and the State (Prosecution/Police) which is to be taken into account.*

V. *In FIR cases pertaining to matrimonial related offence(s); the convenience parameter of the wife, as applicable in divorce/maintenance case etc., shall not apply with same vigour since the convenience of all concerned especially the State/Prosecution is also to be accounted for.*

VI. *No universal guidelines or parameters can possibly be enumerated for exercise of power of the High Court under Section 407 of Cr.P.C., 1973/Section 447 of BNSS, 2023 as every case has its own unique factual conspectus.”*

8. The transfer of the trial proceedings emanating from the FIR in question has been sought for by pleading the cause of convenience of the petitioner (herein)-wife by stating that the petitioner currently resides in Hisar and has been left destitute due to failure of the respondent No.2 to provide her with maintenance. Due to her financial difficulties and the impracticality of travelling frequently from Hisar to Jhajjar, being a single

woman, the petitioner is unable to effectively pursue the proceedings. It is not in dispute that the trial in question emanates from an FIR which is being primarily prosecuted by the State. The petitioner, who has a right to participate in the trial in accordance with law, can well be represented by a counsel at Jhajjar Court. She is not mandatorily required to attend each and every date of hearing in Court since she is the complainant. Her interest in the trial, can well be taken care of by a Counsel. It is neither pleaded nor decipherable from the factual matrix of the case that she is facing any difficulty in engaging a Counsel. Nevertheless, if the need so arises, she may seek the assistance of a Legal Aid Counsel by making requisite plea before the concerned authorities. Furthermore, out of the total 08 prosecution witnesses, 02 have already been examined and 03 have been given up and as such only 03 prosecution witnesses remained to be examined. Moreover, the distance between Jhajjar and Hisar is about 130 kilometers only. Therefore, from the totality of the facts of the case in hand, it cannot be said that it would be pragmatic to transfer the trial from Jhajjar, Haryana to Hisar (Haryana) in view of the convenience of the petitioner. *Ergo*, the instant petition deserves rejection.

9. In view of the above, the instant petition seeking transfer of trial emanating from FIR No.18 dated 19.01.2022 registered under Sections 323/498-A/506/34 of Indian Penal Code, 1860 at Police Station WPS Jhajjar, Haryana (hereinafter to be referred the 'FIR in question') pending before the JMJC, Jhajjar to a Court of competent jurisdiction at Hisar, Haryana; is dismissed for the *nonce*.

10. Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the trial Court shall proceed further, in accordance with law, without being influenced with them.
11. Pending applications), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

December 05, 2024
Ajay

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