

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.105

TA-1561-2023

Date of Decision: 12.08.2024

VICTORIA

....Applicant

Versus

SAMUEL MASIH

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Yashasvi Kapila, Advocate
for the applicant.

Mr. Ankit Aggarwal, Advocate
or the respondent.

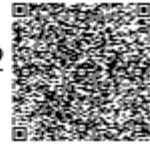
ARCHANA PURI, J. (Oral)

The applicant-wife has filed the present application for seeking transfer of the petition under Section 10 of the Indian Divorce Act i.e. DMC/1690/2023, titled '*Samuel Masih Vs. Victoria*', filed at the instance of respondent-husband, pending in Family Court Jalandhar, to the Family Court (Camp Court) Bholath, District Kapurthala.

In pursuance of the notice issued, respondent has made appearance through counsel. However, learned counsel for the respondent does not intend to file reply to the application, but however, he contests the same.

Learned counsel for the parties heard.

At the very outset, learned counsel for the applicant submits that the applicant is residing at Akbarpur, which does not have direct transportation to the Courts at Jalandhar. The applicant has already filed petition under Section 125 Cr.P.C., which is pending in Family Court (Camp

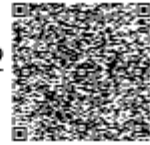


Court) Bholath, District Kapurthala. In these circumstances, keeping in view the convenience of the wife, a prayer has been made for transfer of the case, pending at Family Court Jalandhar, to Family Court (Camp Court), Bholath, District Kapurthala.

On the other hand, learned counsel for the respondent has refuted the claim of the applicant. He submits that, earlier, the applicant had filed one complaint in Women Cell, Kapurthala, but however, no action was taken against the respondent, in the same, and the said complaint was later on filed by the police authorities. In fact, it is submitted by learned counsel for the respondent that if the applicant could travel all the way to Women Cell, Kapurthala, which is at a distance of about 53 kilometres, to file the complaint, then she should not be having any inconvenience to travel from Akbarpur to Jalandhar Courts, to pursue the divorce petition. As such, a prayer has been made for dismissal of the application.

In view of the submissions aforesaid, 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, adverting to the present case. Undisputedly, no child was born from the wedlock of the parties to the lis. Further, it is not disputed that the complaint was filed by the applicant before Women Cell, Kapurthala, which has since been filed by the police authorities. Also, it is not disputed that the distance between Akbarpur, the place where the applicant is residing and Kapurthala, is about 53 kilometres.

However, on query by the Court, it is disclosed by learned counsel for the applicant that the applicant had filed complaint before



Women Cell, Kapurthala, as she was under the impression that the same ought to be filed before District Headquarter, Kapurthala, which was to be dealt by the office of Senior Superintendent of Police. May it be so, the applicant had earlier lodged the complaint, which has since been filed, but however, this fact, as such, cannot *ipso facto* deny about considering the convenience of the wife. The applicant is a house-maker and her father is a daily wager. Considering the same and also considering the distance of Akbarpur to Jalandhar, inconvenience shall be caused to the applicant, while pursuing the divorce petition.

In the light of the aforesaid fact situation, the present application is hereby accepted and the petition under Section 10 of the Indian Divorce Act i.e. DMC/1690/2023, titled ‘*Samuel Masih Vs. Victoria*’, filed at the instance of respondent-husband, stands transferred from the Family Court Jalandhar, to Family Court (Camp Court) Bholath, District Kapurthala. The requisite record of the aforesaid divorce petition be sent by the Family Court Jalandhar, to District and Sessions Judge, Kapurthala.

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

12.08.2024
Himanshu

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes/No