

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

TA-39-2024 (O&M)
Date of Decision: 16.01.2024

Rajni Rani
...Petitioner

Versus

Kaur Singh
...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Rashmeet Singh, Advocate,
for the petitioner.

VIKAS SURI, J. (Oral)

CM-569-CII-2024

Leave granted in terms of Rule 3-A(i), Chapter 6 Part B,
Volume 5 of the High Court Rules and Orders.

CM stands disposed of.

TA-39-2024

1. Prayer in this petition filed by petitioner-wife is for transfer of
petition filed by respondent-husband under Section 13 of the Hindu
Marriage Act, 1955 (for short 'the Act') bearing HMA No.249/2023 dated
21.09.2023, titled *Kaur Singh vs. Rajni Kaur*, pending in the Court of
learned Additional Principal Judge, Family Court, Samana, District Patiala,
to a Court of competent jurisdiction at Amluh, District Fatehgarh Sahib.

2. Learned counsel for the petitioner submits :-

- i) That the parties were married on 21.11.2021 according to Sikh rites.
- ii) That the petitioner-wife is living separately from the respondent-husband and with her parents at their mercy in Ward No.3, Mangarh, Tehsil Amloh, District Fatehgarh Sahib.
- iii) That the petitioner is unemployed, having no source of income and totally dependent upon her parents.
- iv) That the proceedings under Section 125 Cr.P.C. preferred by the petitioner is pending consideration before the Principal Judge, Family Court, Fatehgarh Sahib. Another petition preferred by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005, is also pending in the Court of Judicial Magistrate 1st Class, District Fatehgarh Sahib.
- v) That the distance between the place of residence of petitioner-wife i.e. Ward No.3, Mangarh, Tehsil Amloh, District Fatehgarh Sahib and the place of proceedings under Section 13 of the Act, filed by the respondent-husband, pending before the Principal Judge, Family Court, Samana, District Patiala, is about 80 kilometers on one side and petitioner has to change 2/3 buses to reach the aforesaid Family Court.

3. It is *inter alia* on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

4. I have heard learned counsel for the petitioner.

5. Besides the facts as noticed hereinabove, the legal position in such like cases as the present one, is well established. In this regard, judgment of the Hon'ble Supreme Court rendered in ***N.C.V. Aishwarya vs. A.S. Saravana Karthik Sha***, 2022 SCC Online SC 1199, wherein the Hon'ble Supreme Court 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 socioeconomic 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.”

6. Further reliance can be placed upon the judgments in ***Sumita Singh vs Kumar Sanjay***, AIR 2002 SC 396 and ***Rajani Kishor Pardeshi vs. Kishor Babulal Pardeshi***, (2005) 12 SCC 237, wherein the Hon’ble Supreme Court has observed that “while deciding the transfer application, the Courts are required to give more weightage and consideration to the convenience of the female litigants and transfer of legal proceedings from one Court to another should ordinarily be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships.”

7. Even this Court in number of cases has followed the aforesaid principle of law. Accordingly, it is well settled that while considering the transfer of a matrimonial dispute/case, at the instance of the wife, the Court is to consider the family condition of the wife, the custody of the minor child, economic condition of the wife, her physical health and earning

capacity of the husband and most important the convenience of the wife i.e. she cannot travel alone without assistance of a male member of her family, connectivity of the place to and fro from her place of residence as well as bearing of the litigation charges and travelling expenses.

8. After going through the entire paper-book, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner-wife will have to bear the litigation expenses and transportation expenses and in case, notice of motion is issued, even the respondent-husband has to bear the litigation expenses and in view of the judgments i.e. *Sumita Singh's case* (supra), *Rajani Kishor Pardeshi's case* (supra) and *N.C.V. Aishwarya's case* (supra) passed by the Hon'ble Supreme Court, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The petition filed by respondent-husband under Section 13 of the Act, bearing HMA No.249/2023 dated 21.09.2023, titled *Kaur Singh vs. Rajni Kaur*, pending in the Court of learned Additional Principal Judge, Family Court, Samana, District Patiala, is transferred to a Court of competent jurisdiction at Fatehgarh Sahib.
- b) The learned District Judge, Patiala, is directed to transfer complete record pertaining to the aforesaid case to District Judge, Fatehgarh Sahib.
- c) The parties are directed to appear before the District & Sessions Judge, Fatehgarh Sahib on 21.03.2024.
- d) The District Judge, Fatehgarh Sahib will assign the said petition to the Court of competent jurisdiction.

9. The concerned Court at Fatehgarh Sahib will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.

10. The Court concerned, where the litigation is pending between the parties, will accommodate them with one date in one calendar month.

11. However, liberty is granted to the respondent to revive this petition, if he intends to contest the same, provided that:-

- (a) The respondent will clear all arrears of maintenance amount, if any, in terms of any petition filed by the petitioner either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.
- (b) The respondent will file an affidavit giving undertaking to pay Rs.1,000/- on each and every date of hearing to the petitioner for attending the Court proceedings at District Courts, Patiala.
- (c) The respondent will bring a demand draft of Rs.25,000/-, drawn in favour of petitioner, towards the litigation expenses to pursue the case at District Patiala, in case the respondent opts to contest this petition.

12. I am supported by the decisions rendered by a Co-ordinate Bench of this Court in TA-1315-2022, ***Rohini Arora vs. Nitin Talwar***; TA-1322-2022, ***Jaswinder Kaur vs. Gurvinderjeet Singh***; and TA-1323-2022, ***Usha Rani vs. Karmajit Singh***.

13. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Fatehgarh Sahib, on 21.03.2024, it is directed that a copy of this order be sent to the respondent through registered post, besides sending

a copy of this order to the District Judges concerned through e-mail.
Petitioner through her counsel, present in the Court, is directed to ensure her appearance accordingly.

14. Disposed of.
15. Pending application(s), if any, stands disposed of.

January 16, 2024
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(VIKAS SURI)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No