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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-57260-2024 (O&M)
Date of decision: 18.11.2024

Isha Shree

... Petitioner

Vs.

Parkash Bhardwaj and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepender Singh, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 447 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') read with Section 528 of
BNSS seeking transfer of application/petition bearing No.DV-340-2021,
instituted on 12.11.2021, under Section 12 of the Protection of Women from
Domestic Violence Act, 2005 (for short 'DV Act'), titled as '*Isha Shree and
another Vs. Parkash Bhardwaj and others*' from the Court of learned Judicial
Magistrate 1st Class, Gurugram to the competent Court of jurisdiction at
Hisar.

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2. Learned counsel for the petitioner, *inter alia*, contends that the marriage between the petitioner and respondent No.1 was solemnized on 21.06.2019 according to Hindu rites and rituals and out of this wedlock, one daughter was born on 16.07.2020, who is presently living with the petitioner. However, due to temperamental differences, a matrimonial dispute ensued between the couple and thereafter, the petitioner filed the application/petition (*supra*). The father of the petitioner was working as EHC in Haryana Police at Gurugram and after his retirement, he shifted to Hisar and the petitioner along with her minor daughter also shifted to Hisar. The daughter of the petitioner is also studying in a school in Hisar Cantt. The petitioner is fully dependent upon her parents. It is further contended that the distance between Hisar and Gurugram is around 180 kms and as such, it is very difficult for the petitioner to travel to Gurugram to pursue the petition (*supra*) at the District Court, Gurugram.

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. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, this Court is deciding the present petition *in limine* without issuing notice to the respondents, in order to save litigation cost of the respondents and judicial time of the Court.

5. 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, 1908 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.

6. 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

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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.”

7. In the present case, the petitioner has to look after the child aged about 04 years, who is residing with her. Furthermore, distance of Gurugram from Hisar is around 180 kms, 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.

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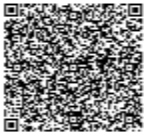


8. In view of the law settled by the Hon'ble Supreme Court in *Sumita Singh's* case (supra), *Rajani Kishor Pardeshi's* case (supra) and *N.C.V. Aishwarya's* case (supra), present petition is allowed. Resultantly, application/petition bearing No.DV-340-2021, instituted on 12.11.2021, under Section 12 of DV Act, titled as '*Isha Shree and another Vs. Parkash Bhardwaj and others*' pending in the Court of learned Judicial Magistrate 1st Class, Gurugram is ordered to be transferred to the jurisdiction of District and Sessions Judge, Hisar. The District Judge, Gurugram is directed to transfer the record pertaining to the aforesaid case to the District Judge, Hisar, who will assign the said petition to the competent Court of jurisdiction. The parties are directed to appear before learned Court below within a period of four weeks from today.

9. However, before parting with this order, liberty is granted to the respondents to revive this petition, if they intends to contest the instant petition, subject to the following terms:-

- (a) Respondent No.1 will clear all arrears of maintenance, if any, in terms of the petition filed by the petitioner under Section 125 Cr.P.C. or in any other proceedings.
- (b) The respondents will undertake on affidavit to pay the expenses of transportation availed by the petitioner to attend the Court proceedings at Gurugram and Rs.500/- as diet charges for each

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and every date of hearing.

- (c) The respondents will bring a demand draft of Rs.25,000/- towards the litigation expenses of the petitioner to pursue the case at Gurugram, in case they opt to contest this petition.

18.11.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No