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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 17.12.2024

Dipti Chauhan

...Petitioner

V/s

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Ms. M.S. Mansi, Advocate for the petitioner.

SUMEET GOEL, J. (Oral)

1. The case in hand is a transfer petition preferred by the petitioner-wife under Section 447 of BNNS, 2023 read with Section 582 of BNNS, 2023 seeking transfer of the criminal case/CHI-367-2023 in FIR No.704 dated 05.11.2022 registered under Sections 323, 34, 498-A, 506 and 406 of IPC filed by her, pending in the Court of ACJM, Bhiwani to a Court of competent jurisdiction at Jhajjar, Haryana.

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 Nos.2 to 4 and hence an FIR *ibid* got registered by her.

2. Learned counsel for the petitioner has iterated that the petitioner and respondent No.2 tied the nuptial knot on 02.05.2021 as per Hindu rites. It has been further iterated that the behaviour of the private respondents towards the petitioner was not cordial and soon the relationship turned sour.

Learned counsel has further iterated that the petitioner has been maltreated as also harassed by the accused/respondent Nos.2 to 4 (herein) on which

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account she was constrained to have the FIR in question registered. Learned counsel asserts that the petitioner was subjected to severe physical assault on the alleged day of occurrence i.e. 04.11.2022 by the private respondents whereinafter she was admitted to General Hospital, Jhajjar. Thereafter, the statement of the petitioner was recorded by the Police and the instant FIR was got registered against the private respondents. After completion of investigation, the final report under Section 173 of Cr.P.C., 1973 was presented before the Court of ACJM, Bhiwani where the matter is stated to be pending. According to learned counsel, the petitioner, after the alleged occurrence, started residing at her parental home i.e. Jhajjar and hence she is unable to effectively pursue the proceedings arising out of the FIR in question which are currently pending before the Court of ACJM, Bhiwani. It has been further contended by the learned counsel that the divorce proceedings instituted by respondent No.2-husband, which were earlier pending in the Family Court, Bhiwani, has already been transferred by this Court vide order dated 07.11.2023 (copy whereof has been annexed as Annexure P-2 with the instant petition) to District Jhajjar. Learned counsel has further iterated that it is extremely difficult and inconvenient for the petitioner to pursue her case further at District, Bhiwani since she is living at village Koka, Tehsil and District Jhajjar. It has been further submitted that the distance between the parental home of the petitioner i.e. village Koka, District Jhajjar to District Bhiwani is approximately 100 kilometers away. Furthermore, learned counsel has submitted that the petitioner resides at a location from which public transport to District Bhiwani takes approximately 4 to 5 hours. Additionally, the petitioner has received life



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threats from respondent No.2 and his family members which has aggravated her difficulty in pursuing the matter. According to learned counsel, the petitioner is neither employed nor has any independent source of income and hence the petitioner is entirely dependent on her parents including transportation, medical needs and clothing etc. Therefore, it has been submitted that the instant petition be allowed and the trial emanating from the FIR in question be transferred from District Bhiwani to a Court of competent jurisdiction at District Jhajjar.

3. I have heard learned counsel for the petitioner and have perused the record.

4. 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



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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.”

5. 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 village Koka, Tehsil and District Jhajjar and has been left destitute due to failure of the respondent No.2-husband to provide her with maintenance. Due to her financial difficulties and the impracticality of travelling frequently from Jhajjar to Bhiwani, a distance of approximately 100 kilometers as also that the petitioner is facing life threats from the private respondents, the petitioner is unable to effectively pursue the proceedings at District Bhiwani.

6. It is not in dispute that the trial in question emanates from an FIR that 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 the Bhiwani Court. She is not mandatorily required to attend each and every 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 avail herself of the assistance of a Legal Aid Counsel by making requisite plea to the concerned authorities. The facts that have emerged from the record of the case contradict the claims of the petitioner

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with regard to the alleged life threats as she has failed to provide any cogent material or lodge any police complaint in this regard. Furthermore, the final report under Section 173 of Cr.P.C., 1973 has already been presented and the trial has commenced. Moreover, the distance between Jhajjar and Bhiwani is approximately 100 kilometers. It goes without saying that assurance of a fair trial; to all the parties to the *lis*, witnesses, as also the public at large; is the paramount feature of criminal justice dispensation system. The transfer jurisdiction of the High Court ought to be exercised sparingly. Ordinarily, the 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 leads to an 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 unsubstantiated requests which could impede the fair and efficient administration of justice.

7. Therefore, from the totality of the facts of the case in hand, it cannot be said that it would be pragmatic to transfer the present criminal case from Bhiwani, Haryana to Jhajjar (Haryana) in view of the convenience of the petitioner. *Ergo*, the instant petition deserves rejection.

8. In view of the above, the instant petition seeking transfer of trial i.e. case/CHI-367-2023, emanating from FIR No.704 dated 05.11.2022 registered under Sections 323, 34, 498-A, 506 and 406 of IPC, pending before the Court of ACJM, Bhiwani to a Court of competent jurisdiction at Jhajjar; Haryana is dismissed.



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9. 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.
10. Pending applications), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

December 17, 2024
Ajay

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