

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.109

TA-641-2024

Date of Decision: 25.03.2025

GURMIT KAUR

....Applicant

Versus

MOHAN LAL

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. M.K. Dhawan, Advocate
for the applicant.

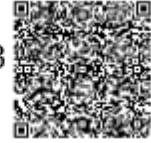
Mr. Akhil Ahuja, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

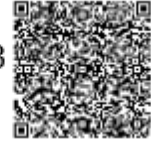
The applicant-wife has filed the present application for seeking transfer of the petition under Section 13 of the Hindu Marriage Act i.e. DMC/1419/2022, titled '*Mohan Lal Vs. Gurmit Kaur*', filed by the respondent-husband, pending in the Family Court, Patiala and she seeks transfer of the same to the Court of competent jurisdiction at Ludhiana.

Upon notice, the respondent made appearance through counsel and filed reply.

The counsel for the parties heard.



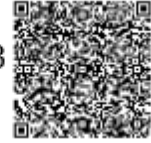
At the very outset, it is submitted by the counsel for the applicant that the marriage between the parties to the lis, had taken place on 04.02.2014. One son, namely, Gurkirat Singh @ Gaurav, was born who is aged about 11 years at present and is in the care and custody of the applicant. However, on account of the matrimonial discord, the parties are residing separate. The applicant is not doing any work and as such, has no source of earning. Even, she has filed the petition under Section 125 Cr.P.C., which was pending in the Courts at Ludhiana, at the time of filing the transfer application, but however, now it is disclosed by the counsel that the same has since been disposed of on 04.02.2025. Also, it is submitted that earlier, the respondent had filed two petitions at Nabha; first petition under Section 10 of the Hindu Marriage Act i.e. DMC/28/2020 and second petition under Sections 7 and 13 of the Guardians and Wards Act, read with Hindu Minority & Guardianship Act i.e. GW/2/2020. However, the transfer application i.e. TA-1095-2021 was filed by the applicant and during the pendency of the same, the respondent had withdrawn the said petitions at Nabha, on the basis whereof the transfer application was disposed of, as having become infructuous, vide order dated 28.02.2023, copy whereof is Annexure P-3. Now, the respondent has filed the petition under Section 13 of the Hindu Marriage Act at Patiala with the motive to harass her. Also, it is submitted that the applicant together with her minor child, is residing with her parental family at Ludhiana. In view of the same, it is submitted that the transfer was sought to Ludhiana Courts, as the petition under Section 125 Cr.P.C. was pending before the said Courts.



However, the counsel for the respondent has assiduously resisted the claim for transfer of the divorce petition. It is submitted that the power to transfer the cases is the discretionary power and the same is exercised by the Courts in favour of the party, who comes to the Court with clean hands. In this case, it is submitted that the applicant has not approached the Court with clean hands. Rather, malice is writ large, while considering the conduct of the applicant. It is submitted that the only ground pleaded was with regard to the petition under Section 125 Cr.P.C., being pending in the Courts at Ludhiana. However, the same has since been decided.

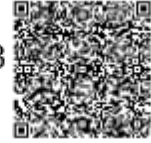
In view of the aforesaid, it is also submitted that at the time of filing of the petition under Section 125 Cr.P.C., the applicant had erroneously, stated her to be residing at Ludhiana at her parental place. In fact, she was also putting up in the house, taken on rent at Nabha. Earlier, both the applicant and the respondent, were together residing in the said house at Nabha. However, the respondent was shunted out from the said house by the applicant and then applicant, as well as the son born from the wedlock of the parties, are residing at the said address. However, the very fact of staying at Nabha was suppressed by the applicant.

Also, it is submitted that the applicant, with an ill-intention to harass the respondent, had filed a complaint before P.S. Kotwali, Nabha, with regard to the respondent, having committed theft in the house at Nabha, which was in her possession. In this regard, the counsel while making reference to the documents annexed with the reply, had stated that the statement of Tajinder Pal Singh Sethi, landlord of the house at Nabha, was recorded, wherein, he had stated that he had rented out the house in May,



2017, to Mohan Lal, in which his wife and son are living. He also stated therein, about no kind of theft having taken place, nor the wife of Mohan Lal, had informed him about the theft. To the similar effect, is the statement of Karnail Singh, got recorded by the police authorities, which is annexed with the reply. On the basis of the said statements, the police authorities had concluded that no incident of theft had occurred in the house in question (which is situated at Nabha). Furthermore, the complainant had not informed the landlord about the said theft. Also, it is observed by the police authorities that no such incident of theft was made out and thus, further proceedings were not carried out and the complaint was recommended to be filed.

In view of the aforesaid documents, it is submitted by the counsel for the applicant that such kind of action, was initiated before the police authorities, with the sole purpose to cause harassment to the respondent. Furthermore, it is also submitted that the respondent is paying a sum of Rs.40,000/- per month, as maintenance to the applicant, which fact has not been disclosed by the applicant in the transfer application. Also, it is submitted that the respondent is paying rent of the accommodation at Nabha, till date and he had also been depositing school fee of the minor son, till the time he was wrongly taken away by the applicant. Also, the applicant submits that he is a government employee and working in Punjabi University. In view of the same, with the sole purpose to harass the respondent, the applicant has made an exaggerated effort to choose a Forum, most inconvenient to him, with a view to deprive him of the fair trial. As such, a prayer has been made for dismissal of the application.



In view of the submissions aforesaid, it is pertinent to mention that, even though, generally the Courts give preference to the convenience of the wife, in case of transfer applications relating to the matrimonial dispute, but however, it is not a thumb rule. Various other circumstances, spelt out from the material brought on record, also ought to be taken into consideration. The question of exercise of the power to transfer the cases, depends upon the facts and circumstances of each case, but the paramount consideration for the exercise of power must be, to meet the ends of justice. The mere convenience/inconvenience of the parties, may not, at times, be enough for exercise of power to transfer the case.

In the case in hand, at the time of filing of the transfer application, the petition under Section 125 Cr.P.C. was pending at Ludhiana, but undisputedly, the same has since been decided. During the course of submissions, the counsel for the applicant did not mention about the extent of maintenance granted to the applicant, either interim or final. However, the counsel for the respondent has stated that the amount of maintenance granted to the applicant, is Rs.40,000/- per month, which on query by the Court, has not been disputed by the counsel for the applicant. The said amount is not a small amount and the financial liability, to pursue the litigation at Patiala, as such, is met with, in the light of the extent of maintenance, ordered by the Court, which is also paid by the respondent.

So far as, the child is concerned, though he is in the custody of the applicant, but he is above 10 years of age, at present and thus, is not of such tender age, which requires presence of the mother, all the time. Even, the applicant is staying with her parents and in the absence of the applicant, while making appearance before the Courts at Patiala, the child can very



well be taken care of, by his grand-parents.

The ill-intention on the part of the applicant is also writ large from the documents coming on record, which have been detailed as above, relating to the accusations of theft, raised by the applicant, which were found to be false one. The applicant had also not disclosed about her staying at Nabha, at the relevant time of filing of the petition under Section 125 Cr.P.C. Looking at this conduct of the applicant, it is also significant to note that the cases are not unknown, where the party seeking justice chooses a Forum, most inconvenient to the adversary, with a view to deprive the other party to fair trial, or in the minimum, to cause inconvenience to him/her, in pursuing the litigation.

Considering the aforesaid circumstances, as spelt out from the material brought on record, there is no substantial ground made out for transfer of the divorce petition.

Hence, the transfer application is hereby dismissed.

25.03.2025

Himanshu

**(ARCHANA PURI)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes/No