



TA-946-2023 (O&M)

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

Sr. No.105

TA-946-2023 (O&M)
Date of Decision: 20.05.2025

KAVITA

....Applicant

Versus

RAKESH KUMAR

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Ashwani Gaur and
Ms. Shivangi Sharma, Advocates
for the applicant.

Mr. Ashok K. Sharma (Bhana) and
Mrs. Suman Sharma, Advocates
for the respondent.

ARCHANA PURI, J. (Oral)**CM-15253-CII-2024**

The present application has been filed at the behest of the applicant, for placing on record the copy of the petition under Section 125 Cr.P.C., filed by the applicant after filing of the transfer application.

In view of the averments made in the application, same is allowed and the application under Section 125, is taken on record as Annexure P-4.

CM-22208-CII-2024

The present application has been filed at the behest of the



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applicant, for placing on record the affidavit dated 16.11.2024 and compromise dated 20.09.2021, as Annexures P-5 and P-6, in consonance with the order dated 29.10.2024.

In view of the averments made in the application, same is allowed and the requisite documents are taken on record as Annexures P-5 and P-6.

Main case

The applicant-wife has filed the present application for seeking transfer of the petition under Section 11 read with Section 5 of the Hindu Marriage Act i.e. HMA/377/2023, titled '*Rakesh Kumar Vs. Kavita*', filed by the respondent-husband, pending in the Family Court, Jind and she seeks transfer of the same to the Court of competent jurisdiction at Rohtak.

Upon notice issued, 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 04.12.2022, but no child was born from the said wedlock. However, on account of the matrimonial dispute, the parties are residing separate. The applicant is residing at her parental place at Rohtak. Further, it is submitted that the applicant was suffering from 'Tuberculosis' and she had undergone treatment. Reference has been made to Annexure P-3, which is the treatment record.

On query by the Court, it is submitted by the counsel for the applicant that the applicant is not doing any job and as such, is dependent



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upon her parental family. In the given circumstances, it is submitted that it is difficult for the applicant, to commute a distance of about 74 kilometres, to defend the petition under Section 11 of the Hindu Marriage Act.

On the other hand, the counsel for the respondent has resisted the claim for transfer of the petition under Section 11 of the Hindu Marriage Act. While making reference to the reply filed, the counsel for the respondent submits that the applicant is a clever lady and she had earlier solemnized marriage with one Amit, son of Haripal. Even, she had filed the protection petition before District & Sessions Judge, Rohtak. However, the fact of the earlier marriage was not disclosed. To substantiate his version, with regard to the earlier marriage, the counsel has pin-pointed the copy of the protection petition, Annexure R-1, copy of the marriage certificate, Annexure R-2. Also, it is submitted that the applicant had got lodged an FIR against her previous husband, copy whereof is Annexure R-4 and the contents of the said FIR, with regard to the allegations of rape, were found to be false and the cancellation report was prepared, copy whereof is Annexure R-5.

From the aforesaid documents, it is evident that the applicant was married, at the relevant time, but however, she had very cleverly concealed this fact, at the time of performance of marriage with the present applicant. In fact, the counsel also submitted that the applicant had also got lodged FIR bearing No.365 dated 27.07.2023, under Sections 34, 354-A, 376, 406, 498-A, 506 and 511 IPC, against the respondent and his family members. However, the family members, during the course of investigation, were found to be innocent and the challan was presented qua the respondent



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only and he is facing trial, relating to the said FIR, in the Courts at Rohtak. Furthermore, the counsel submits that the documents, Annexures P-5 and P-6, are the affidavit and the panchayati compromise, which have been placed on record today. The applicant had not disclosed about any such arrival of compromise with Amit, at earlier instance. It was only after filing of reply in the present application by the respondent, on asking of the Court, the applicant had produced the said documents. It is falsely stated by her about the marriage having not performed with Amit.

In view of the rival submissions made aforesaid, it is pertinent to mention that there are allegations, at the instance of the respondent, about the concealment of the material fact of the 1st marriage of the applicant. Reference has been made to various documents, which have been brought on record. However, this Court is consciously not making any reference to the aforesaid documents and plea of concealment of the material facts, shall be adjudicated by the Court concerned, where the petition under Section 11 of the Hindu Marriage Act, is pending. For the purposes of considering the transfer application, suffice to take into consideration that the applicant was suffering from 'Tuberculosis' and her medical treatment record is Annexure P-3. She is not doing any work and as such, has no source of earning. The distance between the two places is 74 kilometres. Moreover, the respondent is already facing trial in the criminal case, in the Courts at Rohtak.

Considering the aforesaid circumstances, it is just and expedient to accept the transfer application. Hence, the transfer application is allowed and the petition under Section 11 read with Section 5 of the Hindu Marriage Act i.e. HMA/377/2023, titled '*Rakesh Kumar Vs. Kavita*', filed by the



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respondent-husband, stands transferred from the Family Court, Jind, to the Court of competent jurisdiction at Rohtak. The requisite record of the aforesaid case be sent by the Family Court, Jind, to the District and Sessions Judge, Rohtak.

Learned District and Sessions Judge, Rohtak, shall assign the said petition to the Court, where the trial relating to the FIR, as detailed aforesaid is already pending. Even, the parties are directed to appear before the Court concerned, within a period of one month from today onwards.

The Court concerned shall make an endeavour to adjourn both the cases, preferably for one and the same date.

20.05.2025
Himanshu

(ARCHANA PURI)
JUDGE

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