VERDICTUM.IN

CNR No: PHHC010016472026

2026:PHHC:200211

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

TA No.24 of 2026
Date of decision: 12.11.2026

[redacted]

…Applicant

Versus

[redacted]

…Respondent

CORAM: ***HON'BLE MS. JUSTICE MANDEEP PANNU***

Present :- Mr. Karan Kaushal, Advocate and
Mr. Nitesh Dalal, Advocate
for the applicant.

Mr. Kshitij Sharma, Senior Advocate with
Ms. Tamanna Banwala, Advocate
for the respondent.

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MANDEEP PANNU, J. (Oral)

1. The present transfer application has been filed by the applicant-petitioner under Section 24 read with Section 151 of the Code of Civil Procedure, 1908, read with Section 7 of the Family Courts Act, 1984, seeking transfer of Domestic Violence Case No. 139 of 2025, titled '*Punita Mittal versus Ashutosh Mittal and others'*, pending before the Court of Shri Abhishek Chaudhary, learned Judicial Magistrate First Class, Gurugram, to the Court of Ms. Poonam Kanwar, learned Additional Principal Judge, Family Court, Gurugram, where a petition under Section 125 of the Code of Criminal Procedure, 1973 (corresponding Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023), between the same parties is stated to be pending adjudication.

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2. The case set up by the applicant is that the parties to the present application are involved in matrimonial litigation and, apart from the proceedings under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the DV Act'), a petition seeking maintenance between them is also pending before the Family Court, Gurugram. It is contended that the allegations and the factual background involved in both the proceedings are substantially overlapping and that the evidence required to be led in the two matters would also be similar. According to the applicant, continuation of the two proceedings before different courts would result in multiplicity of litigation, unnecessary expenditure and inconvenience to the parties and may also give rise to conflicting findings on the same set of facts. It is, therefore, submitted that the interest of justice would be better served if both the matters are heard by the same court.

3. Learned counsel for the applicant has further contended that the Family Court is competent to grant reliefs contemplated under Sections 18 to 22 of the DV Act in view of the provisions of Section 26 thereof. It is argued that since the Family Court is already seized of the matrimonial dispute and the maintenance proceedings between the parties, there is no legal impediment in transferring the proceedings under the DV Act to the said court. In support of this contention, learned counsel has placed reliance upon the judgment of the Bombay High Court in ***Rohan Shah versus Nishigandha Shah*, *Miscellaneous Civil Application No. 477 of 2022***, decided on 20.12.2023. It is submitted that in the said judgment, the

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Bombay High Court, after considering the provisions of the DV Act and the Family Courts Act, held that an application instituted under Section 12 of the DV Act before a Magistrate could be transferred to the Family Court. The Court also took into consideration the fact that the Family Court could grant the reliefs contemplated under Sections 18 to 22 of the DV Act and that transfer of the proceedings would avoid multiplicity of litigation and save the time and expense of the parties. It is, accordingly, contended that the present application deserves to be allowed on similar considerations.

4. *Per contra*, learned counsel for the respondent has opposed the application and submitted that an independent application under Section 12 of the DV Act is maintainable before the Court of the Judicial Magistrate First Class, which is the forum specifically designated under the statute. It is contended that the mere fact that certain reliefs under the DV Act can also be sought before a Family Court in proceedings already pending there does not confer upon the Family Court the original jurisdiction to entertain and adjudicate an independent application under Section 12 of the DV Act. Learned counsel has submitted that Section 26 of the DV Act has a limited scope and cannot be construed as conferring concurrent jurisdiction upon the Family Court to entertain an application under Section 12 of the Act. It is further argued that transfer of the proceedings would deprive the aggrieved person of the statutory procedure and appellate remedy provided under the DV Act. In support of these submissions, learned counsel has placed reliance upon the judgment of the Delhi High Court in ***Aseem Khanna versus Akanksha Dua, TR.P. (Crl.)***

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No. 23 of 2024, decided on 18.09.2024, as well as the judgment of the Hon'ble Supreme Court in ***Shaurabh Kumar Tripathi versus Vidhi Rawal, 2025 INSC 734***. It is, thus, contended that the Family Court lacks jurisdiction to entertain an independent proceeding instituted under Section 12 of the DV Act and the prayer for transfer is liable to be declined.

5. I have considered the rival submissions advanced by learned counsel for the parties.

6. The controversy which arises for consideration is whether an independent proceeding instituted under Section 12 of the DV Act and pending before the Court of a Judicial Magistrate First Class can be transferred to a Family Court merely because another proceeding between the same parties is pending before the Family Court, particularly when the proposed transferee court is sought to be vested with the adjudication of the entire proceeding under the DV Act.

7. Before proceeding further, it would be appropriate to notice the relevant statutory provisions. Section 12 of the DV Act provides for presentation of an application by an aggrieved person or on her behalf before the Magistrate seeking one or more reliefs under the Act. Section 27 identifies the Court of the Judicial Magistrate First Class or the Metropolitan Magistrate, as the case may be, within whose local limits the aggrieved person permanently or temporarily resides or carries on business or is employed, or where the respondent resides or carries on business or is employed, or where the cause of action has arisen, as the competent court to entertain the application under the Act. Section 28 provides that, save as

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otherwise provided in the Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973. Thus, the statutory scheme makes a specific provision regarding the forum before which an independent application under Section 12 is to be instituted and the procedure governing such proceedings.

8. At this stage, it is also necessary to examine Section 26 of the DV Act, upon which considerable reliance has been placed by learned counsel for the applicant-petitioner. The said provision enables an aggrieved person to seek reliefs available under Sections 18 to 22 of the Act in any legal proceeding before a Civil Court, Family Court or Criminal Court affecting her and the respondent, whether such proceeding was instituted before or after the commencement of the DV Act. The provision, therefore, enables the aggrieved person to seek the specified reliefs under the DV Act in proceedings which are otherwise pending before the courts mentioned therein. However, the question whether such provision also confers jurisdiction upon a Family Court to entertain an independent application under Section 12 of the DV Act is entirely different. The power to grant certain reliefs under the Act in an already pending proceeding cannot automatically be equated with the jurisdiction to entertain and adjudicate an independent application instituted under Section 12 thereof.

9. This distinction has also been explained by the Kerala High Court in ***Vineet Ganesh versus Priyanka Vasan, Transfer Appeal (Civil) No.1 of 2023***, decided on 09.08.2023. The Division Bench, after examining

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the scheme of the DV Act, held that although the reliefs contemplated under Sections 18 to 22 may be sought before a Family Court in a proceeding pending before it, an independent application under Section 12 of the Act can be entertained only by the Magistrate. The Court further held that the jurisdiction conferred upon the Family Court under Section 26 is not concurrent with the original jurisdiction specifically vested in the Magistrate under Section 27. It was accordingly held that a proceeding instituted under the DV Act before a Judicial Magistrate First Class cannot be transferred to a Family Court.

10. The aforesaid legal position was subsequently considered by the Delhi High Court in ***Aseem Khanna versus Akanksha Dua (supra)***. In the said case also, the husband had sought transfer of proceedings instituted by his wife under Section 12 of the DV Act from the Court of the Metropolitan Magistrate to the Family Court where divorce proceedings between the parties were pending. The principal ground for seeking transfer was that the allegations in the two proceedings were substantially similar and that their adjudication by the same court would avoid conflicting decisions. The Delhi High Court considered the judgment of the Bombay High Court in ***Rohan Shah versus Nishigandha Shah (supra)*** as well as the contrary view taken by the Kerala High Court in ***Vineet Ganesh versus Priyanka Vasan (supra)***. After examining the provisions of Sections 26 and 27 of the DV Act and the scheme of the Family Courts Act, the Delhi High Court declined to follow the view taken by the Bombay High Court and held that the original jurisdiction to entertain an application under Section

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12 of the DV Act vests exclusively in the jurisdictional Magistrate. It was further observed that the Family Court can grant reliefs under Sections 18 to 22 in proceedings pending before it, but such power does not confer upon it the jurisdiction to entertain an independent application under Section 12 of the Act. The Court also took note of the fact that the procedure governing adjudication, enforcement of orders and the appellate remedy under the two statutory mechanisms are different. Consequently, the prayer for transfer of the DV proceedings to the Family Court was declined.

11. Coming to the judgment relied upon by learned counsel for the applicant in ***Rohan Shah versus Nishigandha Shah (supra)***, there is no doubt that the Bombay High Court took a contrary view and permitted transfer of an application instituted under Section 12 of the DV Act from the Court of the Magistrate to the Family Court. The Court, *inter-alia*, observed that there was no specific bar against the Family Court dealing with proceedings under the DV Act, particularly in view of Section 26 thereof. It also took into consideration the overlapping nature of the disputes and the desirability of avoiding multiplicity of proceedings. However, the said judgment represents a view different from the one subsequently adopted by the Delhi High Court in ***Aseem Khanna (supra)***. The latter judgment specifically noticed and considered ***Rohan Shah (supra)*** and the contrary view of the Kerala High Court before arriving at its conclusion.

12. The aforesaid distinction assumes further significance in view

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of the subsequent judgment of the Hon'ble Supreme Court in ***Shaurabh Kumar Tripathi versus Vidhi Rawal (supra)***. In the said case, the Hon'ble Supreme Court examined the nature of proceedings initiated under Section 12 of the DV Act and the jurisdiction of the High Court to exercise its inherent powers for quashing such proceedings. While holding that proceedings under the DV Act are predominantly civil in nature, the Hon'ble Supreme Court also examined the scheme of Sections 12, 26, 27 and 28 of the Act. The Court clarified that an application under Section 12 is to be entertained by the Magistrate having jurisdiction under Section 27 and that Section 26 does not confer upon a Civil Court or Family Court the jurisdiction to entertain an independent application under Section 12. The Court also explained that the availability of reliefs under Sections 18 to 22 before other courts in proceedings pending before them does not mean that such courts acquire concurrent original jurisdiction to entertain an application under Section 12 of the Act.

13. Though the Hon'ble Supreme Court in the aforesaid judgment was primarily concerned with the exercise of inherent jurisdiction to quash proceedings under Section 12 of the DV Act and was not directly examining the question of transfer of such proceedings to a Family Court, the statutory interpretation placed by it upon Sections 26 and 27 of the Act is of considerable relevance to the controversy involved in the present case. The fact that the proceedings under the DV Act are predominantly civil in nature does not, by itself, alter the forum specifically designated by the legislature for entertaining an independent application under Section 12.

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The nature of the reliefs sought and the nature of the forum having jurisdiction to entertain the original application are separate considerations. Consequently, the civil nature of the reliefs cannot be treated as sufficient to confer upon the Family Court jurisdiction to adjudicate an independent application under Section 12 of the Act.

14. It is also necessary to deal with the reliance placed upon Section 7 of the Family Courts Act, 1984. Section 7(2)(a) of the said Act confers upon the Family Court the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX of the Code of Criminal Procedure, which relates to orders for maintenance of wives, children and parents. The fact that the Family Court is competent to adjudicate a maintenance petition between the parties does not mean that it thereby acquires jurisdiction to entertain every other proceeding between them, particularly one for which a separate forum has been prescribed under a special enactment. Section 7 of the Family Courts Act cannot be interpreted so as to enlarge the jurisdiction of the Family Court beyond that contemplated by the statute.

15. In the present case, the principal ground urged by the applicant-petitioner for seeking transfer is that a maintenance petition between the same parties is already pending before the Family Court and that both proceedings arise out of the matrimonial relationship between them. However, the mere fact that the parties are common or that certain allegations may overlap cannot be a ground to transfer a proceeding to a court which is not vested with the requisite original jurisdiction to entertain

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it. The possibility of some common evidence being led in the two proceedings or the apprehension of conflicting findings cannot override the statutory scheme governing the jurisdiction of the respective courts. Moreover, the legislature itself, by enacting Section 26 of the DV Act, has provided a mechanism whereby an aggrieved person can seek reliefs under Sections 18 to 22 in proceedings pending before a Family Court. Thus, the purpose of avoiding multiplicity of litigation can be achieved to the extent permitted by the statute without transferring the independent proceeding under Section 12 to a forum not designated for its original adjudication.

16. The apprehension that the parties may have to incur additional expenditure or face inconvenience on account of the proceedings being pending before two different courts is also not sufficient to justify the transfer sought. Convenience of the parties, though a relevant consideration in deciding a transfer application, cannot be the sole consideration where the proposed transfer would result in the proceeding being placed before a court lacking jurisdiction to entertain the same. The jurisdiction of a court is conferred by statute and cannot be assumed merely on the basis of convenience or consent of the parties.

17. It is, therefore, held that the mere pendency of a maintenance petition between the parties before the Family Court does not confer upon that Court the jurisdiction to entertain and adjudicate an independent proceeding instituted under Section 12 of the DV Act. The proposed transfer, if allowed, would amount to placing the said proceeding before a forum which has not been vested with the requisite original jurisdiction

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under the statutory scheme. The applicant has, therefore, failed to make out a case for transfer of the proceedings in question.

18. Consequently, finding no merit in the present transfer application, the same is hereby ***dismissed***.

19. Needless to observe that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the pending proceedings under the DV Act or the maintenance petition, which shall be adjudicated by the respective courts in accordance with law.

20. The parties are directed to appear before learned Judicial Magistrate First Class, Gurugram, on the date already fixed.

21. Pending application(s), if any, also stand(s) disposed of.

(MANDEEP PANNU)
JUDGE

12.11.2026
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No