

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

TA No. 1219/2022
Date of decision: May 24,2023

[REDACTED]

.....Petitioner

v

[REDACTED]

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. TS Grewal, Advocate for the petitioner.

Mr. Pruvjot Singh Sidana, Advocate for the respondent.

Nidhi Gupta, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 13 of the Hindu Marriage Act,1955 titled [REDACTED] from the Court of Ms. Tripat Jot Kaur, Addl. Principal Judge, Family Court-II, Jalandhar to a court of competent jurisdiction at Chandigarh.

2. It is stated by the petitioner in the petition:

i) that the parties were married on 20.1.2019 according to Sikh rites and rituals;

ii) that the petitioner and respondent although lived together as husband and wife,did not consummate the marriage;

iii) that immediately after marriage the respondent and his family members started harassing the petitioner for more dowries and several gruesome acts of cruelty were committed against her by the respondent, his mother and sister;

iv) petitioner, after she was thrown out of her matrimonial home, is living separately since 18.12.2021;

v) that the respondent has filed the divorce petition at Jalandhar to harass the petitioner;

vi) petitioner is working as a Radiologist at [REDACTED] Chandigarh and has difficulty in travelling to Jalandhar in order to attend the proceedings;

vii) that she apprehends danger at the hands of respondent being related to affluent family; and she has also filed a police complaint on 27.3.2022 but no action has been taken;

viii) that being a lady, it would be very difficult for the petitioner to frequently travel 300 kms. (to and fro) between Chandigarh and Jalandhar to attend the proceedings.

3. It is inter alia on these grounds that petitioner prays for transfer of the case, as detailed in para 1 above.

4. Upon notice, written statement by way of affidavit has been filed by the respondent stating therein that the present Transfer petition has

been filed by the petitioner to harass him. It is further submitted that respondent is also a practising Doctor of Medicine, and is employed in [REDACTED] Jalandhar. Citing the nature of duties that he has to attend to, the transfer of the divorce petition is seriously objected to. As regards the allegations of cruelty or demand of dowry, the same have been denied and counter allegations of petitioner not cooperating in making their marriage successful has been levelled. It is further alleged that the petitioner did not want mediation proceedings initiated by this Court to materialize, as she filed a complaint in Women Cell on 3.11.2022, while the mediation proceedings were fixed before this Court on 16.11.2022. It is further alleged that petitioner is harassing the respondent since the day of marriage. It is also stated that the petitioner had been regularly travelling to Amritsar, which is beyond Jalandhar, and therefore, it is not open to the petitioner to raise objections in the present petition.

5. Ld. counsel for the petitioner makes submission on the line of averments made in the petition, and relies upon law laid down by the Hon'ble Supreme Court in **N.C.V.Aishwarya v A.S.Saravana Karthik Sha Law Finder Doc Id # 201639** to contend that as per decision of the Hon'ble Supreme Court in a matrimonial petition such as the present one, convenience of wife must be looked at while considering transfer.

6. Per contra, ld. counsel for the respondent vehemently opposes the prayer made in the petition by reiterating the averments made in the written statement. In support he relies upon judgment of the Hon'ble Supreme Court in **Anupam Ghosh and another v Faiz Mohammed and others, Law Finder Doc Id # 2032739** and submits that in the cited

judgment, Hon'ble Apex Court dismissed transfer petition on the ground of unfair trial and respondents being local bigwigs. Further relies upon judgments of this Court in **Nisha @ Manisha v Amarveer Yadav**, (TA No.299/2019 decided on 15.1.2020); and **Rinky Rani v Daljit Kumar**, **Law Finder Doc Id # 1975389** to submit that leniency shown to ladies in such transfer matters is often misused and that Courts should not be swayed by emotions merely because applicant is a wife.

7. No other argument has been made on behalf of the parties.

8. Heard ld. counsel.

9. In the present case, both the parties are doctors, and being educated, it was hoped that an amicable resolution of all their disputes would be reached by way of mediation. However, mediation between the parties has failed as per report dated 29.11.2022 submitted by the Mediator, Mediation and Conciliation Centre of this Court.

In any event, this Court is not inclined to go into the acrimonious allegations levelled by the parties against each other, but has to consider the legal position in this respect. There can be no dispute that the preponderance of law in such like cases as the present one, leans towards the convenience of the wife. In this regard, judgment of the Hon'ble Supreme Court rendered in **N.C.V. Aishwarya vs A.S. Saravana Karthik Sha**," 2022 Live Law (SC) 627, is most relevant wherein the Hon'ble Supreme Court has 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 behavioral 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 socioeconomic 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.”

10. Further reliance can be placed upon the judgments in **“Sumita Singh vs Kumar Sanjay”, 2002 SC 396** and **“Rajani Kishor Pardeshi vs Kishor Babulal Pardeshi”, 2005(12) SCC 237**, wherein the Hon’ble Supreme Court has observed that *“while deciding the transfer application, the Courts are required to give more weightage and consideration to the convenience of the female litigants and transfer of legal proceedings from one Court to another should ordinarily be allowed, taking into consideration their convenience and the Courts should desist from putting female litigants under undue hardships.”*

11. Even this Court in number of cases has followed the aforesaid principle of law. Accordingly, it is well settled that while considering the transfer of a matrimonial dispute/case, at the instance of the wife, the Court is to consider the family condition of the wife, the custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important the convenience of the wife i.e. she cannot travel alone without assistance of a male member of her

family, connectivity of the place to and fro from her place of residence as well as bearing of the litigation charges and travelling expenses.

12. As regards the judgments relied upon by the Id. counsel for the respondent, the same are not applicable to the facts of the present case.

13. In view of the judgments i.e. **Sumita Singh's** case (supra), **Rajani Kishor Pardeshi's** case (supra) and **N.C.V. Aishwarya's** case (supra) passed by the Hon'ble Supreme Court, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

a) The petition filed by respondent husband under Section 13 of Hindu Marriage Act,1955, detailed in para (1) above is transferred from Jalandhar to a Court of competent jurisdiction at Chandigarh;

b) The Id. District Judge, Jalandhar is directed to transfer complete record pertaining to the aforesaid case to District Judge, Chandigarh;

c) The parties through their counsel are directed to appear before the District & Sessions Judge, Chandigarh on 17.7.2023;

d) The District Judge, Chandigarh will assign the said petition to the Court of competent jurisdiction.

14. Though the mediation proceedings before this Court have fizzled away, still the concerned Court at Chandigarh will explore and if parties agree refer the case before the Mediation and Conciliation Centre for amicable settlement between the parties.

15. The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.

Allowed in the above terms.

24th May,2023
Joshi

(Nidhi Gupta)
Judge