

HIGH COURT OF PUNJAB AND HARYANA

Bench: JUSTICE ARVIND SINGH SANGWAN

Date of Decision: 16.10.2023

TA No.1357 of 2023 (O&M)

Amandeep KaurPetitioner

Versus

Revail SinghRespondent

Sections, Acts, Rules, and Articles mentioned in the judgement:

Section 13(1)(ia), 24 of the Hindu Marriage Act

Section 125 Cr.P.C.

Section 24 of the Code of Civil Procedure

Sections 498-A, 406, 120-B IPC

Section 12 of the Domestic Violence Act

Subject: Transfer of a petition under Section 13(1)(ia) of the Hindu Marriage Act from Family Court, Amritsar to Camp Court Patti, Tarn Taran, taking into consideration the convenience of the female litigant, economic soundness of the parties, and the desirability of trying cases together involving common questions of fact and law.

Headnotes:

Transfer Petition – Transfer of a petition under Section 13(1)(ia) of the Hindu Marriage Act from Family Court, Amritsar to Camp Court Patti, Tarn Taran – Petitioner’s claim of the minor girl child being in her custody – FIR registered under Sections 498-A, 406, 120-B IPC – Mediation proceedings failed – Convenience of the female litigant – Economic soundness and social strata of the parties considered – Convenience of the wife in traveling alone – Connectivity and bearing of litigation expenses – Transfer allowed with conditions.

Transfer of Cases – Transfer of cases involving common questions of fact and law between the same parties – Avoiding multiplicity in trial and conflict of decisions – Desirability of trying cases together – Consideration of wife’s convenience in transfer matters – Reference to judgments in Sumita Singh, Rajani Kishor Pardeshi, and N.C.V. Aishwarya cases.

Decision – Transfer petition allowed – Petition under Section 13(1)(ia) of the Hindu Marriage Act transferred to Camp Court Patti, Tarn Taran – Directions issued for transfer of records and appearances – Mediation and conciliation

encouraged – Conditions imposed on the respondent for revival of the petition if contested.

Referred Cases:

- Sumita Singh vs Kumar Sanjay 2002 SC 396
- Rajani Kishor Pardeshi vs Kishor Babulal Pardeshi 2005(12) SCC 237
- N.C.V. Aishwarya vs A.S. Saravana Karthik Sha 2022 Live Law (SC) 627

Representing Advocate:

Mr. Lupil Gupta, Advocate for the petitioner.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for transfer of the petition filed under Section 13(1)(ia) of the Hindu Marriage Act, pending in the Family Court, Amritsar to the competent Court of jurisdiction at Camp Court Patti, Tarn Taran.

Counsel for the petitioner has submitted that it is specifically stated in the petition filed under Section 125 Cr.P.C. that the minor girl child is living in the care and custody of the petitioner and the petitioner/wife has filed a petition for maintenance at Camp Court Patti, Tarn Taran and even an FIR No.66 dated 05.06.2023 under Sections 498-A, 406, 120-B IPC has been registered at Tarn Taran and now the respondent/husband has filed a petition under Section 13 (1) (ia) of the Hindu Marriage Act for seeking divorce.

Counsel for the petitioner has further submitted that even the mediation proceedings during the pendency of the anticipatory bail application filed by the respondent/husband in the aforesaid FIR, failed

due to the adamant behaviour of the respondent/husband and the petitioner is facing great difficulty to defend the case as there is a distance of about 50 Kms from Camp Court Patti, Tarn Taran to Amritsar.

Counsel for the petitioner has relied upon the judgments **“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.”

Counsel for the petitioner has also relied upon the judgment “**N.C.V. Aishwarya vs A.S. Saravana Karthik Sha,**” 2022 Live Law (SC) 627, wherein the Hon’ble Supreme Court has observed

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 behavioural 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.”*

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.

After hearing the counsel for the petitioner, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner/wife will have to bear the litigation expenses and transportation expenses and in case, notice of motion is issued, even the respondent/husband has to bear the litigation expenses and 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 deem it appropriate to allow

the present petition, subject to the following conditions:-

1. *The petition filed under Section 13(1)(ia) of the Hindu Marriage Act, pending before the Family Court, Amritsar will be transferred to the competent Court of jurisdiction at Camp Court Patti, Tarn Taran.*
2. *The District Judge, Tarn Taran, will assign the said petition to the competent Court of jurisdiction.*
3. *The Family Court, Amritsar is directed to transfer all the record pertaining to the aforesaid case to District Judge, Tarn Taran.*
4. *The parties are directed to appear before the trial Court, Camp Court Patti, Tarn Taran, within a period of 01 month from today.*

5. *The Family Court, Camp Court Patti, Tarn Taran will make all endeavour to refer the case before the Mediation and Conciliation Centre for exploring the possibility of some amicable settlement between the parties.*
6. *The Court concerned, where the litigation pending between the parties, will accommodate them with one date in one calendar month.*

However, liberty is granted to the respondent to revive this

petition, if he intent to contest the same, provided that:-

- (a) *The respondent will clear all arrears of maintenance amount, if any, in terms of a petition filed by the petitioner either under Section 125 Cr.P.C. or Section 12 of the Domestic Violence Act or Section 24 of the Hindu Marriage Act.*
- (b) *The respondent will file an affidavit giving undertaking to pay Rs.1,000/- per day, to the petitioner for attending the Court proceedings at Amritsar, on each and every date of hearing.*
- (c) *The respondent will bring a demand draft of Rs.25,000/towards the litigation expenses of the petitioner to pursue the case at Amritsar in case the respondent opt to contest this petition.*

Disposed of.

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