
(2022) 08 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Transfer Application No. 117, 134 Of 2021 (O&M)

Nirmal @ Nirmala

APPELLANT

Vs

Satpal And Others

RESPONDENT

Date of Decision : 03-08-2022

Acts Referred:

Hindu Marriage Act, 1955 — Section 13, 13(i)(ii), 13(1)(ia)
Mental Health Act, 2017 — Section 74
Code Of Criminal Procedure, 1973 — Section 125
Code Of Civil Procedure, 1908 — Section 24

Citation : (2022) 08 P&H CK 0015

Hon'ble Judges : Arvind Singh Sangwan, J

Bench : Single Bench

Advocate : Parminder Singh

Final Decision : Allowed

Judgement

Arvind Singh Sangwan, J

This common order shall dispose of above mentioned two transfer applications as they are similar in nature.

Prayer in the first petition is for transfer of the civil suit, filed by the respondent-husband praying for decree of declaration that the petitioner-wife is mentally ill and insane person and she should be sent to the Govt. Mental Asylum, titled as Satpal vs. Nirmal @ Nirmala and others, pending before the Civil Judge (Sr. Divn.), Panipat to the competent Court of jurisdiction at Karnal. Prayer in the second petition is for transfer of the petition filed by the respondent-husband under Section 13(i)(ii) and 1(ia) of the Hindu Marriage Act, 1955 and Section 74 of the Mental Health Act, 2017, titled as Satpal vs. Nirmal @ Nirmala and others, pending before the Family Court, Panipat to the competent Court of jurisdiction at Karnal.

The common grounds taken in both the petitions are that the petitioner has filed

a petition under Section 125 Cr.P.C. at Karnal, however, no maintenance is being paid. It is submitted that the respondent-husband has filed aforesaid two cases at Panipat in order to harass the petitioner and he has arrayed not only the petitioner but also the family members including maternal uncles etc. as party, though there is no such mental illness faced by the petitioner.

Learned counsel 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 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."

Learned counsel for the petitioner has further relied upon 2022 Live Law (SC) 627 N.C.V. *Aishwarya vs. A.S. Saravana Karthik Sha*, wherein 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 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."

There is no representation on behalf of the respondent-husband.

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 family condition of the wife, custody of the minor child, economic condition of the wife, her physical health and earning capacity of the husband and most important, 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 if the

aforesaid petitions/cases are not transferred, the petitioner-wife will have to bear the litigation expenses and transportation expenses and also in view of the ratio of law laid down by Hon'ble Supreme Court in Sumita Singh's case (supra) and Rajani Kishor Pardeshi's case (supra), this Court deems it appropriate to allow the present petitions, with the following directions:-

(i) The aforesaid civil suit as well as the petition under Section 13 of the Hindu Marriage Act, pending at the Courts at Panipat will be transferred to the competent Court of jurisdiction at Karnal.

(ii) The District Judge, Karnal will assign the said cases to the competent Court of jurisdiction.

(iii) The Courts at Panipat are directed to transfer all the record pertaining to the aforesaid case to District Judge, Karnal.

(iv) The parties are directed to appear before the trial Court at Karnal within a period of 01 month from today.

A photocopy of this order be placed on the file of other connected case.