

Punjab-Haryana High Court

Veena vs Vinay Kumar on 23 August, 1991

Equivalent citations: I (1992) DMC 59

Author: S Rathor

Bench: S Rathor

JUDGMENT S.S. Rathor, J.

1. This application under Section 24 of the Code of Civil Procedure has been instituted by the wife for the transfer of a divorce petition under Sections 12(1)(d)/13 and 14 of the Hindu Marriage Act, filed by her husband in the competent Court at Jagadhri to a Court of competent jurisdiction at Ferozepur where she is presently residing in her parental house.

2. The marriage between the parties took place on 4-10-1989. Unfortunately, soon after the marriage strained relationships developed between the parties resulting in their separation and thereafter, petitioner started living with her parents at Ferozepur. On 1-8-1990, the petitioner filed an application under Section 125 of the Code of Criminal Procedure which is pending in the Court at Ferozepur. Simultaneously, she also filed a criminal complaint at Ferozepur under Sections 406/498A of the Indian Penal Code, which is also pending for adjudication. The respondent-husband also filed a petition for annulment of marriage and divorce under Sections 12(1)(d)/13 read with Section 14 of the Hindu Marriage Act on 8-8-1990 at Jagadhri. With the pendency of these proceedings instituted by either of the party, the divorce petition filed an pending in the Court at Jagadhri is sought to be transferred to Ferozepur only on the ground that the petitioner is living with her parents and is unable to persue the case against her at Jagadhri which is at about a distance of 300 kms. from Ferozepur. It has also been alleged that the defence of the petitioner in the proceedings at Jagadhri would be prejudiced as petitioner being lady, would not be able to travel on each date of hearing and to incur heavy travelling expenditure. It is also alleged that in the interest of justice, petition filed by the husband be transferred to some Court at Ferozepur where he application for maintenance and criminal complaint as detailed above, had been filed prior to the divorce petition in question.

3. The respondent has strongly opposed the application. In the written statement, respondent has alleged that soon after leaving Jagadhri alongwith her uncle on 10-7-1990, the petitioner moved a petition under Section 125 Cr. P.C as well as the aforesaid criminal complaint within twenty days. It is also alleged that in the divorce petition filed by him at Jagadhri, the petitioner has been served and in spite of five adjournments, no written statement has been filed and is even avoiding appearance in the Court for reconciliation as ordered by the Court and no case for transfer is made out in terms of Section 24 of the Code of Civil Procedure.

4. Mr. Hari Om Sharma, Counsel for Vinay Kumar respondent, on his client's instructions, present in Courts made a statement at Bar that the respondent is a student of LL.B. Ist Year at Kurukshetra University. He is son of a labourer and with great difficulty, his father is imparting education to his son. It has also been stated that the divorce is being sought by the respondent on a very grave allegation and his well-founded apprehension are that the petitioner was pregnant at the time of marriage which fact was Concealed both from the 2. respondent and his parents. Due to this fact,

relationships worsened between the parties resulting in their separation and the petitioner was taken away by her uncle. Because of the graveness of allegation, the whole family of the petitioner and her relations at Ferozepur have become inimical to the respondent and as such, the transfer of the divorce, petition would result in personal insecurity and hardship to the respondent and his material witnesses.

5. The petitioner's Counsel has challenged the correctness of the allegations in the divorce petition but it is not disputed that the allegations are of the nature as alleged above. Be that as it may, I am not required to comment either way on this aspect of the matter. But the fact remains that petition for divorce has been filed on very grave allegations. It is for the trial Court to find out the truthfulness of the allegations.

6. During the course of arguments, keeping in view the aforesaid facts and circumstances of the case, a suggestion was given by the Court to the parties that their all cases would be transferred at Jalandhar which place would be equally convenient and suitable to the parties. The respondent had no hesitation in accepting this proposal of the Court and stated that he may be saved from harm to his person which he apprehends if he is to attend the Courts at Ferozepur. But on the other hand, the petitioner who was present in Court alongwith her mother and brother, flatly declined the proposal. Yet the Court further, gave ample time to the Counsel for the petitioner to seek necessary instructions from his client dispassionately. However, the learned Counsel for the petitioner expressed his inability to agree to the suggestion of the Court as the petitioner and her other members of the family are not agreeable to this suggestion at all.

7. As per allegations in the petition, the only ground made out is that the petitioner being lady, would not be in a position to come to attend the proceedings at Jagadhri which is at a distance of 300 kms. from Ferozepur. Convenience of a party is one of the factors for the transfer of the case. But this convenience should not be of one party but should be of both the parties. Jalandhar is nearer to Ferozepur than to Jagadhri. This offer having been turned down, it seems that the ground taken in the petition, is not bona fide on. The act and conduct as expressed by the petitioner during the proceedings is indicative of the fact that she want the respondent to be at Ferozepur to attend the proceeding at any cost.

8. As stated earlier, the Counsel has sought the transfer only on the ground of convenience to the petitioner. In support of this contention, he has cited few judgments of this Court which are not applicable to the facts of the instant case, yet hereinafter dealt with.

9. CM. No. 5720 CII of 1989, titled Smt. Balbir Kaur V. Sat Pal, decided on 8.1.1991 by brother A.L. Bahri, J. relied upon by the counsel is of no help to the petitioner. A petition under Section 13 of the Hindu Marriage Act was filed by Balbir Kaur in the Court at Patiala, Lateron, her husband filed a petition under Section 9 of the Hindu Marriage Act in a Court at Ambala. There was no appearance on behalf of the respond and in terms of Section 11A of the Hindu Marriage Act, it was a fit case where subsequently instituted petition by the husband at Ambala was transferred at Patiala. It was also observed by the Court that evidence to be produced would be common in both the cases and can be dealt with together at one time in one Court. Hence this judgment is not applicable to the

facts of the present case. Another judgment relied upon is CM No. 6306-CI of 1990 titled Joginder Kaur v. Harkesh Kumar, again decided 8-1-1991 by brother A.L. Bahri J. In this case, in June 1988, the wife filed a complaint under Section 406/120B IPC in the Court of Chief Judicial Magistrate Patiala. Simultaneously, an application under Section 125 of the Code of Criminal Procedure, for grant of maintenance allowance was also filed by her in Court Patiala which was allowed on 12.6.1989, granting her maintenance. Wife also filed a petition under Section 9 of the Hindu Marriage Act for restitution of marriage which was also decreed by the Court on 16.2.1989. Thereafter, husband Harkesh Kumar filed a petition under Section 9 of the Hindu Marriage Act in the Court at Ludhiana which was dismissed. Again, the husband filed petition under Section 13 of the Hindu Marriage Act at Ludhiana. In view of these facts, the Court ordered the transfer of the divorce petition filed by the husband at Ludhiana to a competent Court at Patiala. The distance between Patiala and Ludhiana is about 80 kms. In these circumstances, pendency of the criminal complaint at Patiala instituted by the wife and bona de convenience in her favour was taken to be a good ground for transfer of the case. Again, this judgment is of no avail to the petitioner. Still another judgment delivered by brother G.R. Majithia, J. on 14.5.1991 in CM No. 20011-C-II of 1991 (Amarjit Singh v. Kamaljit Kaur), is of no avail to the petitioner. In this case, on 15.12.1990, wife filed a petition under Section 9 of the Hindu Marriage Act which was pending in the Court of Shri M.K. Bansal, Senior Sub Judge, Chandigarh. The husband also filed a petition under Section 13 of the Hindu Marriage Act, pending before Shri D.S. Chatha, Additional District Judge, Ludhiana. The husband sought transfer of the case from Chandigarh to a Court of competent jurisdiction at Ludhiana solely on the ground that his petition is prior in point of time. This contention was rejected primarily on the ground that the transfer was resulting in hardship to the wife to go to Ludhiana in the case filed by her with the competent Court at Chandigarh. Husband's prayer for transfer was declined, distance between Ludhiana & Chandigarh presumably being least inconvenient to the husband. This case is least applicable to the facts of the case in hand. The Counsel for the petitioner lastly relied upon another judgment reported as Sneh Lata v. Ved Parkash, 1991 (1) S.L.J. 399, decided by brother M.S. Liberhan J. In this case, the wife filed a petition under Section 125 Cr. P.C. on behalf of herself and her two minor children at Amritsar. A complaint under Section 406, IPC was also filed by her at Amritsar. The wife also filed a petition for divorce at Amritsar. Undisputedly, parties were living separately from each other since 1983. In 1986, husband filed a suit for the custody of the minor son only; No custody was sought of the minor daughter. The Court transferred the case of the husband for custody of the child pending at Faridkot to a competent Court at Amritsar where petition for divorce and other criminal proceedings initiated much earlier were pending.

10. It could be conveniently said that the aforesaid judgments are not applicable to the facts of the case in hand. Still, analytical examination of facts of each case, has been made with a view to show their inapplicability to the facts and circumstances of the case in hand.

11. The petitioner has miserably failed to make out a case for transfer. She has pleaded for her convenience alone which as already observed, is not bona fide one particularly when a very reasonable and legitimate offer of transfer of the case between the parties to the competent Courts at Jalandhar is not acceptable to her. Each case is to be viewed and decided, on the basis of its own facts. The convenience of one party to the litigation i.e. wife alone, cannot be accepted as of rule for

the transfer of a case. The Court is required to adopt a balanced view of convenience of both the parties, of course may be with some premium in favour of the wife. In this case, transfer of the case shall certainly result in inconvenience to the respondent/husband and his material witnesses if the trial is transferred to a Court at Ferozepur. Even otherwise, a very strong case is to be made out for transfer of the case from an ordinary Court of competent jurisdiction. The parties last resided at Jagadhri and it is only at this place that where a divorce petition is to be filed and tried. The petitioner has miserably failed to make out a case for taking the case out of the hands of a Court of competent jurisdiction at Jagadhri in terms of Section 24 of the Code of Civil Procedure.

12. In view of the facts narrated above and the reasons assigned, this petition which is devoid of any merit, is ordered to be dismissed. No costs.