

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.101

**TA-403-2020 (O&M)
Date of Decision: 06.08.2024**

████████████████████

....Applicant

Versus

████████████████████

....Respondent

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present:- Mr. Dhruv Khanna, Advocate
for the applicant.

Mr. S.S. Mor, Advocate
for the respondent.

ARCHANA PURI, J. (Oral)

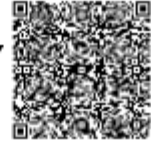
CM-4444-CII-2024

The present application has been filed at the behest of the applicant, thereby furnishing the list of the pending cases, in consonance with the order dated 22.12.2023, passed by this Court.

In view of the averments made in the application, same is allowed and the requisite list is taken on record.

Main case

The applicant-wife has filed the present application for seeking transfer of petition under Section 11 of the Hindu Marriage Act, 1955 i.e. HMA-239-2020, titled ██████████ *Singh Vs.* ██████████ *Kaur*, filed at the instance of the respondent-husband, pending in Family Court Jhajjar and she seeks transfer of the same to the Court of competent jurisdiction at Rupnagar.



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In pursuance of the notice issued, respondent has made appearance through counsel and filed reply.

Learned counsel for the parties heard.

At the very outset, learned counsel for the applicant submits that the marriage between the applicant and respondent had taken place on 24.03.2016 and two children were born from the said wedlock, who are presently, in the care and custody of the respondent-husband. Furthermore, while making reference to the contents of the application, it is submitted by learned counsel for the applicant that the respondent had kidnapped the children and took them to his native village in District Jhajjar. Even, it is submitted that he was demanding a sum of Rs.5,00,000/- from the applicant, for giving divorce and also for giving back the custody of the minor children to her.

Also, it is submitted that the applicant had filed an FIR bearing No.178 dated 18.06.2020, under Sections 363 and 365 IPC, at Police Station City, District Rupnagar, which is still pending. Furthermore, it is submitted that it was only thereafter, the petition under Section 11 of the Hindu Marriage Act, has been filed in the Courts at Jhajjar. Also, learned counsel submits that the applicant is residing with her aged parents and as such, it is difficult for her to defend the petition under Section 11 of the Hindu Marriage Act, at a distance of 350 kilometres, from the place of her residence.

On the contrary, learned counsel for the respondent has refuted the claim of the applicant. In fact, while making reference to the contents of the reply filed by the respondent, it is submitted that in the FIR got registered at the instance of the applicant, the remaining accused, apart from



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the respondent-husband, were discharged. So far as, the distance and the custody of the children is concerned, the same, as such, is not disputed by learned counsel for the respondent. However, while making reference to paragraph No.3 of the reply, learned counsel for the respondent submits that prior to performance of marriage with the respondent on 24.03.2016, the applicant was married with one [REDACTED] Singh. During the subsistence of marriage with [REDACTED] Singh, the applicant had performed second marriage with the respondent, while keeping him in dark. The respondent came to know about the factum of the earlier marriage of the applicant, only when he could lay his hands on the documents, relating to the litigation pending between the applicant and her previous husband, [REDACTED] Singh, while she was away from the matrimonial house. In this regard, learned counsel has made reference to the litigation initiated at the instance of the applicant, *vis-a-vis* her previous husband, which are Annexures R-1 to R-10.

Admittedly, the marriage between the parties had taken place on 24.03.2016. However, from the voluminous documents placed on record, which are Annexures R-1 to R-10, it is evident that the applicant had earlier married [REDACTED] Singh, son of [REDACTED] Singh. However, without seeking divorce from [REDACTED] Singh, the applicant had performed second marriage with the present respondent and two children were born from the said wedlock. However, while keeping the respondent in darkness, the applicant continued with the litigation with her previous husband. From perusal of the order dated 17.03.2016, copy whereof is Annexure R-1, it is evident that the applicant had been seeking maintenance from [REDACTED] Singh and FAO-M-148-2012 was filed by her for enhancement of the amount of maintenance. Vide the said order dated 17.03.2016, a direction was given by this Court,



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for payment of balance amount of maintenance by [REDACTED] Singh, to [REDACTED] Kaur i.e. the present applicant. Annexure R-2 is the order dated 28.07.2016 passed in the aforesaid FAO. Further, Annexure R-3 is copy of the order dated 18.10.2016 passed in the same FAO. Similar is the order dated 24.01.2017, copy whereof is Annexure R-4. Likewise, is the order dated 22.03.2017 passed in the aforesaid FAO, copy whereof is Annexure R-5, review that an amount of Rs.10,000/- was paid by [REDACTED] Singh to the applicant. Then, Annexure R-6 is the order dated 30.03.2017 in the same FAO. Furthermore, the order dated 13.11.2018 is Annexure R-7. The said order also reveals about receipt of the amount of Rs.75,000/- by the mother of [REDACTED] Kaur, in the Court.

For appropriate appraisal, the order dated 13.11.2018 is reproduced in verbatim, as hereingiven:-

“ Learned counsel for the appellant has handed over an amount of Rs.75,000/- in cash in the Court today to the mother of the respondent, who is present in the Court. It is submitted that the remaining amount of maintenance shall be paid on or before the next date of hearing.

Adjourned to 11.12.2018.”

Even, in the FIR, got registered at the instance of the applicant against the present respondent, anticipatory bail was granted to the respondent, vide order dated 03.07.2020, copy whereof is Annexure R-8.

Annexure R-9, is the copy of the judgment dated 10.05.2018 passed by learned Appellate Court, *vis-a-vis* the FIR bearing No.142 dated 05.09.2009, under Sections 406 and 498-A IPC, got lodged at the instance of [REDACTED] Kaur, against her previous husband, [REDACTED] Singh, at Police



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Station City, District Rupnagar. The said appeal was filed by the applicant- [REDACTED] Kaur, being complainant of the aforesaid FIR, against the judgment of acquittal dated 10.01.2017 passed by learned Trial Court. The said appeal was dismissed by learned Appellate Court. Furthermore, it is necessary to make mention that the petition under Section 13-B of the Hindu Marriage Act, for dissolution of marriage by way of decree of divorce with mutual consent, qua the previous husband of the applicant, was filed by her on 30.11.2019 and the same was decided on 12.06.2020.

Copy of the judgment dated 12.06.2020 passed by learned Family Court is Annexure R-10. Perusal of the said judgment reveals that after filing of the said application, an attempt was made for reconciliation, but however, it did not fructify. The statements of the parties were recorded and it was settled between the parties that [REDACTED] Singh shall pay a sum of Rs.5,15,000/- to [REDACTED] Kaur and he had paid an amount of Rs.3,00,000/-, at the time of recording of statement of first motion and the remaining amount of Rs.2,15,000/- was paid to [REDACTED] Kaur, at the time of statement of second motion. Only thereupon, the decree of divorce under Section 13-B of the Hindu Marriage Act, was passed. Even, the copies of the statements, got recorded by [REDACTED] Kaur and [REDACTED] Singh, in the petition under Section 13-B of the Hindu Marriage Act, have been placed on record.

From the perusal of the aforesaid documents annexed with the reply, it is evident that during subsistence of the first marriage with [REDACTED] Singh, the applicant had performed second marriage with the respondent- [REDACTED] Singh and two children were born from the said wedlock. It is a categorical claim of the respondent that he was not aware of the first marriage of the applicant with [REDACTED] Singh and he was kept in dark by [REDACTED]

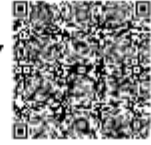


Kaur

Not only this, even after performance of second marriage, the applicant continued to extract money from her first husband, ██████████ Singh. She had initiated litigation with regard to first marriage, even after performance of the second marriage with the respondent-██████████ Singh on 24.03.2016. She continued to pursue FAO-M-148-2012 and extract money, in the form of maintenance, from ██████████ Singh. Suffice to consider the orders, copies whereof are Annexure R-1 to R-7, coming on record. The applicant did not stop here and she had filed an FIR against the respondent-██████████ Singh, in which he was granted anticipatory bail, vide order dated 03.07.2020, Annexure R-8. Furthermore, qua the criminal proceedings initiated by ██████████ Kaur against ██████████ Singh, judgment of acquittal was passed by learned Trial Court on 30.01.2017. Feeling aggrieved, the applicant herself had again filed the Criminal Appeal No.139 of 2017, which was dismissed by learned Appellate Court, vide judgment dated 10.05.2018, copy whereof is Annexure R-9.

However, she did not stop here also. Thereafter, she together with ██████████ Singh, had filed the petition under Section 13-B of the Hindu Marriage Act i.e. HMA-433-2019 dated 30.11.2019 and the decree of divorce by mutual consent was passed on 12.06.2020, copy whereof is Annexure R-10. From the contents of the said judgment, as well as the copies of the statements of ██████████ Kaur and ██████████ Singh, coming forth, it is revealed that an amount of Rs.5,15,000/- was extracted by ██████████ Kaur, from ██████████ Singh, her previous husband, while giving divorce with mutual consent.

In these circumstances, while looking into the conduct of the



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applicant, which is reprehensible, the applicant had the guts to file an application for seeking transfer of the petition under Section 11 of the Hindu Marriage Act, which is pending in Family Court Jhajjar and she seeks transfer of the same to the Court of competent jurisdiction at Rupnagar. No doubt, it is settled law that the convenience of the woman, ought to be taken into consideration, while adjudicating upon the question of the transfer of the litigation against her, but simultaneously, it is also very essential to take into consideration the conduct of the woman.

The detail of the litigation, initiated at the instance of the applicant, against her previous husband, while keeping the respondent i.e. the second husband in darkness, reveals that she continued to pursue and extract money from ████████ Singh, her previous husband. Thus, the greed is writ large on the part of the applicant. Considering this conduct of the applicant, absolutely, no case is made out to allow the transfer application.

Hence, the present application is hereby dismissed.

06.08.2024

Himanshu

**(ARCHANA PURI)
JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes/No