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

Sr. No.235

**CRM-M-13677-2023 (O&M)
Date of decision : 12.8.2025**

Vinati Budhwar

..... Petitioner

VERSUS

State of Haryana and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. N.K. Malhotra, Advocate for the petitioner.

Mr. Ved Parkash, Senior DAG, Haryana.

Mr. Vivek Salathia, Advocate for respondent No.2

KIRTI SINGH, J. (Oral)

1. The instant petition under Section 482 Cr.P.C. read with Section 407 Cr.P.C. has been filed for seeking transfer of case titled as 'State Vs. Rachit' vide case No.CHI-1023-2022 which is pending in the Court of Civil Judge (Jr. Divn.)/JNFC/Gurugram, out of FIR No.178 dated 13.12.2021, under Sections 323, 34, 406, 498-A & 506 IPC, registered at Police Station Women, West Gurugram for transferring the same in the competent Court of JMIC (Sr. Divn.), Rohtak.

2. The facts in brief are that marriage between the petitioner-wife and respondent No.2-husband was solemnized on 8.2.2019 according to Hindu rites & ceremonies at Rohtak and out of the wedlock, a son was born on 29.3.2021. Subsequently, on account of temperamental differences, a matrimonial dispute ensued between both the parties. It is alleged that respondent's No.2 family was not happy with the dowry articles given at the time of marriage and they used to harass and humiliate to the petitioner, on

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account of which she made a complaint against respondent No.2 and in-laws for cruelty, harassment, breach of trust, dowry demands and criminal intimidation.

3. Learned counsel for the petitioner *inter alia* submits that due to the harassment that the petitioner was subjected to by respondent No.2, she got registered the aforesaid FIR at Gurugram, where her father was posted at the time. It is submitted that the petitioner is presently stationed at Rohtak, and it would be very difficult for her to commute to Gurugram for the purpose of trial, both places being at a distance of near about 100 kilometers on each side. It is further submitted that there other cases, them being a petition under Section 125 Cr.P.C., a petition under DV Act and a petition under Section 13 of the Hindu Marriage Act, are pending before the concerned Courts at Rohtak. It is pointed out that the divorce petition pending between the parties was infact, instituted by respondent No.2 at Kapurthala, but was transferred to Rohtak by this Court vide order dated 7.9.2021 in TA No.710 of 2021. In support of his contentions, learned counsel has placed reliance upon the judgment passed by the Hon'ble Supreme Court in **Neelam Kanwar Vs. Devinder Singh Kanwar 2000(10) SVV 589.**

4. *Per contra*, learned counsel for respondent No.2 as well as learned State counsel have opposed the petition and have submitted that the transfer application filed by the petitioner-wife is legally not maintainable as the petitioner wife has set out no justifiable reason for transferring the petition from Gurugram to Rohtak.

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5. Learned counsel for respondent No.2 submits that a bare perusal of the contents of the transfer petition would clearly reveal that the petitioner wife has not raised any substantive ground which would warrant transfer of a criminal case from Gurugram to Rohtak, especially when the FIR was lodged at Gurugram by the petitioner as per her convenience, whereafter the investigation was carried out. Now, when the trial is advancing at a considerable pace before the Civil Judge, Jr. Divn. Gurugram, the petitioner cannot be permitted to cite her convenience and get transferred the entire criminal proceedings pending against respondent No.2 to Rohtak. Learned counsel submits that the role of the petitioner in the criminal proceedings is limited to recording of her evidence and it is not necessary for her to attend the said matter on each and every date whereas, considering the role of respondent No 2, who is an accused person in the criminal case, he is required to attend proceedings on each and every date; and in case the matter is transferred to Rohtak, any default by respondent No.2 in attending the proceedings would result in issuance warrants against him. Reliance has further been placed upon judgment passed by the Hon'ble Supreme Court in **Jyoti Mishra Vs. Dhananjaya Mishra, 2011(1) RCR (Criminal) 542** and the judgment of Bombay High Court passed in **Smt. Shital w/o Aditya Jibhkate Vs. State of Maharashtra, through P.S.O, Police Station Bajaj Nagar, Nagpur and others (Criminal Application (Appeal) No.75 of 2021)** to submit that criminal proceedings cannot be kept at parlance with divorce proceedings, or proceedings under Section 125 etc.

6. Heard the submissions made by learned counsel for the parties.

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7. Vide order dated 8.5.2025 passed by this Court, the parties were directed to appear before the Mediation and Conciliation Centre of this Court on 19.5.2025 to explore the possibility of an amicable resolution to the dispute. However, as the report of the Mediator, the matter could not be settled.

8. The settled legal position with respect to transfer of criminal proceedings on the sole ground of convenience of the wife was discussed by the Hon'ble Supreme Court in the case of **Jyoti Mishra (supra)**, wherein it was held that in a criminal proceeding, the rights of the accused cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife. The relevant paras of the judgment read thus:-

“3. The petitioner is the estranged wife of the respondent. While still living with him at Hyderabad, she had filed a written report before the Station House Officer, P.S. Alwal, Secunderabad, that led to the institution of FIR No. 470/2009 dated September 09, 2009 under Section 498-A of the Penal Code citing her husband Dhananjaya Mishra (the sole respondent) and five others as accused. The Police, after investigation, submitted charge sheet and the proceedings against the accused are now pending before the VIth Metropolitan Magistrate, Cyberabad in CC No. 804/2009.

4. In the meanwhile, the petitioner left her husband at Hyderabad and came to live with her parents at Indore. She has filed this petition for transferring the criminal case pending before the VIth Metropolitan Magistrate, Cyberabad to a court of competent jurisdiction at Indore, Madhya Pradesh.

5. The first thing that needs to be noticed is that in the Transfer Petitions only the husband Dhananjaya Mishra is

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impleaded as respondent. The other accused in the criminal case are not made parties to these Transfer Petitions. The Transfer Petitions are, therefore, liable to be dismissed on that score alone.

6. Otherwise also, we are not inclined to transfer a criminal case from one State to another solely on the ground that it would be more convenient for the complainant (wife) to prosecute the matter there. It is true that in cases of dissolution of marriage, restitution of conjugal rights or maintenance, this Court shows much indulgence to the wife and ordinarily transfers the case to a place where it would be more convenient for the wife to prosecute the proceedings.

7. But a criminal case is on a somewhat different footing. The accused may not be able to attend the court proceedings at Indore for many reasons, one of which may be financial constraints, but the consequences of non- appearance of the accused before the Indore Court would be quite drastic. Having regard to the consequences of non-appearance of the accused in a criminal trial, we are loath to entertain the petitioner's prayer for transfer. In a criminal proceeding, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be ignored for the convenience of the complainant simply because she happens to be the estranged wife.”

9. The instant case is squarely covered by the aforesaid judicial pronouncement. Learned counsel for the petitioner has not been able to carve out any exception with respect to the same. Investigation was completed in the instant case by police officials from Gurugram, the FIR having been registered in their jurisdiction, and thereafter challan was presented. The trial is in progress before the Court of Civil Judge, Jr. Divn. Gurugram. Trite to say that criminal proceedings lie at a different footing from cases concerning of dissolution of marriage, restitution of conjugal rights

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or maintenance, and given the nature of such proceedings, the right of the accused to a fair trial and a proper opportunity to defend himself cannot be overlooked simply to accommodate the ease of the complainant.

10. In view of foregoing discussion, the present petition stands dismissed.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

12.8.2025

Ramandeep Singh

Whether speaking / reasoned

Yes/No

Whether Reportable

Yes/No