

Maya Rani Vs. Jai Gopal

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Court : Punjab and Haryana

Decided On : Apr-06-2000

Reported in : AIR2000P& H238

Judge : S.S. Sudhalkar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24

Appeal No. : Civil Misc. No. 3987-CII of 1999

Appellant : Maya Rani

Respondent : Jai Gopal

Advocate for Def. : S.K. Garg, Adv.

Advocate for Pet/Ap. : Praveen Hans, Adv.

Disposition : Application dismissed

Judgement :

ORDER

S.S. Sudhalkar, J.

1. This is an application for transferring the petition under Section 13 of the Hindu Marriage Act (in short 'HMA') from the Court of District Judge, Jind to the Court of District Judge, Hisar or Bhiwani. The petitioner is the wife of the respondent and

respondent has filed abovementioned petition for divorce in the Court of learned District Judge. Jind.

2. The reasons sought for transfer of the petition are that earlier the respondent had filed an application under Section 9 of the HMA, which was compromised and dismissed as withdrawn on 19-4-1990. The earlier divorce petition filed by the respondent under Section 13 of the HMA was also compromised on 22-8-1996. Thereafter the parties decided to reside together but subsequently on 20-5-1998, respondent filed another petition under Section 13 of the HMA in which it was alleged that on 9-9-1998, the petitioner went to District Courts, Jind to engage a lawyer and when she was coming out of the Court, the respondent, who is working as Clerk in the Court of C.J.M., Jind, with the help of some Government counsel, followed her in a police vehicle No. HR-31-A-0376. However, she went straight to the house of her uncle Sita Ram, who is residing at Jind. While following her, respondent along with the police and Government counsel entered her uncle's house and they searched the whole house but the petitioner escaped from the backside of the house. It is further contended that on 6-1-1999, when the petitioner, was coming out of the Court, the respondent threatened her to give the statement in the divorce petition in his favour so that he could take the divorce. He threatened her to kill or get her kidnapped. The respondent also used the abusive language. He also threatened that all the judges are known to him and as he will wish the same will happen. She went to the Police Station, Jind many times, to lodge the complaint but no action was taken.

3. It is further contended by the petitioner that the respondent is posted as Clerk in the office of the District and Sessions Judge-cum-Chairman, District Legal Services Authority, Jind and is now posted as Clerk in the Court of Chief Judicial Magistrate, Jind, it is also contended that respondent himself has threatened the petitioner that 'all the Judges are known to him and as the will wish, the same will happen, as is clear from the complaint, Annexure A-1.' Therefore, a reasonable apprehension has arisen in the mind of the petitioner that she might not get a fair and impartial trial. The respondent has filed the written statement and has denied the contentions made in the petition.

4. I have heard the learned counsel.

5. It has to be considered as to whether the case can be transferred because of the above allegations. It can be seen from Annexure A-1 which is a copy of the complaint sent to the Senior Supdt. of Police, Jind that it is dated 23-1-1999, and it mentioned instances of 9-9-1998 and 6-1-1999, which are the instances relied upon by the petitioner in the application for transferring the case. Therefore, it is clear that till 23-1-1999. Petitioner had not given an application to the Senior Supdt. of Police, Jind, even though a serious incident of following her along with the police and the Government counsel took place on 9-9-1998. Moreover, it is to be seen that the petitioner is trying to take advantage of the respondent working as a Clerk in the Court. If a person is working as Clerk in the Court that itself can give no reason for transferring the case.

6. Counsel for the petitioner has cited the case of Smt. Bina Rani of Ambala.Cantt. v. Raj Kumar, reported as 1992 HRR 83. It has been held therein that when husband was a practising lawyer at Rewari having more than ten years standing, a reasonable apprehension can arise in the mind of the wife that she may not get a fair trial from the Court at Rewari and that she was entitled to get the case transferred. However, it has to be seen that this principle has been overruled by the Division Bench of this Court in Madan Lal v. Subhash (C. M. No. 6883 of 1998, decided on 23-12-1998).

7. Moreover, if cases are being transferred In such a way, then it will amount to the belief that Judges are approachable by the subordinate staff, which will not be a healthy one. Moreover, if the respondent is sure that he will get the result in his favour, he would keep quiet and not go on telling the same to the petitioner. In addition to this, it can be found that for the first time after 9-9-1998, this was reduced into writing by the petitioner on 23-1-1999 when she made an application to the S.S.P. Jind. Factually also, this contention cannot be accepted as true.

8. In normal cases, convenience of the parties may be a consideration. However there are allegations against the parties. The Court dealing with transfer application has to be more cautious in granting transfer application. The reasons being, granting of transfer application may be considered by certain segments of

society as a stigma on the Judge, which a Court dealing with the transfer application should see that it is avoided. In the case of *Rajkot Cancer Society v. Municipal Corporation, Rajkot*, AIR 1988 Gujarat 63, it has been held as under at p. 64) :--

'....., it must be borne in mind that transfer of a case from one Court to another is a pretty serious matter because it casts indirectly doubt on the integrity or competence of the Judge from whom the matter is transferred. This should not be done without a proper and sufficient cause. If there are good and sufficient reasons for transferring a case from one Court to another, they must be clearly set out. Mere presumptions or possible apprehension could not and should not be the basis of transferring a case from one Court to another. Only in very special circumstances, it may become necessary to transfer a case from one Court to another. Such a power of transfer of a case from one Court to another has to be exercised with due care and caution bearing in mind that there would be no unnecessary, improper or unjustifiable stigma or slur on the Court from which the case is transferred.

9. This Court has also held in C. M. No. 1712-CII of 2000 and C. R. 674 of 2000, decided by this Court on February 18, 2000, as under :--

'It may be mentioned that it is very easy for any party to contend that the other side is proclaiming that it has won over a Judge and is going to get a favourable judgment. However, such a contention is totally absurd. Firstly, a party has no reason to declare it to the other side or to the common friends. Moreover, if a party has really won over a Judge it will sit quiet and wait for the judgment and not go on telling common friends or to the other side this fact, so that the other side may get a chance to level allegations.'

10. When the petitioner has tried to adopt such a mode for getting the case transferred, I find that the transfer application deserves to be disallowed.

11. As a result, this transfer application is dismissed.