

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**CMPMO No. 195 of 2018  
With CrMMO No. 210 of 2018  
Decided on: November 30, 2018**

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|------|--|--------|-----------------|
| 1.   | CMPMO No. 195 of 2018<br>Shri Gian Chand |        | .....Petitioner |
|      |  | Versus |                 |
|      | Smt. Sheetla Devi                        |        | ...Respondent   |
| <br> |  |        |                 |
| 2.   | CrMMO No. 210 of 2018<br>Shri Gian Chand |        | .....Petitioner |
|      |  | Versus |                 |
|      | Smt. Sheetla Devi                        |        | ...Respondent   |
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Coram

**Hon'ble Mr. Justice Sandeep Sharma, Judge.  
Whether approved for reporting<sup>1</sup>? Yes.**

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For the petitioner:      Mr. Ajay Sharma, Advocate.

For the respondent:      Mr. Kush Sharma, Advocate.

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**Sandeep Sharma, J. (Oral)**

Since, both the petitions have been filed by the petitioner seeking transfer of cases pending between the parties from Hamirpur to Kangra at Dharamshala, same were clubbed together vide order dated 8.8.2018, and were heard together and are being disposed of vide this common judgment.

**2.** In CMPMO No. 195 of 2018, by invoking provision of S.24 CPC, prayer has been made for transferring HMA No. 95/16 from the court of learned District Judge, Hamirpur to the court of learned District Judge, Kangra at Dharamshala. Similarly, in CrMMO No. 210 of 2018, filed under S.482 CrPC, prayer has been made for

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Whether reporters of the Local papers are allowed to see the judgment? .

transferring Cr. Misc. Application No. 81 of 2016 from the court of learned Single Judge, Hamirpur to the court of learned Single Judge, Kangra at Dharamshala. In both the cases, husband is the petitioner.

**3.** Facts, as emerge from the pleadings of the parties are that the respondent (wife) left the matrimonial home on 29.1.1985, without information and since then, she has not come back. In the year 2013, respondent filed a case for maintenance in the competent Court of law at Hamirpur. Said case was allegedly decided *ex parte* on 9.7.2015, without any intimation to the petitioner. After having received copy of judgment through the police, petitioner filed a revision petition, which is still pending adjudication. Petitioner also filed a petition for decree of divorce under Section 13 of the Hindu Marriage Act, which has been registered as HMA No. 95/2016 and is pending in the court of learned District Judge, Hamirpur. It is argued on behalf of the petitioner that on more than a dozen occasions, when petitioner reached the premises of the court, respondent with the help of her daughter quarreled with him and even gave beatings to the petitioner with the help of her known ones. Petitioner made complaints to the Superintendents of Police, Hamirpur and Kangra.

**4.** Apprehending harassment and threat to his life and limb, petitioner has sought transfer of both the cases pending in the courts at Hamirpur to Kangra. Petitioner has further pleaded that he

is a heart patient and suffering from 'Herperzoster' (as mentioned in the petition) and because of disease, stress and strain, petitioner finds it difficult even to approach the courts at Hamirpur, after traveling such a long distance from Yol, Kangra.

5. Respondent, by way of reply to CMPMO No. 195 of 2018, has refuted the averments contained in the petition and categorically stated that she being an old lady, cannot go to Dharamshala, which is approximately 150 kms from her residence, to attend the court cases. Respondent has also placed on record, medical record to demonstrate that she is suffering from spinal chord injury and having an acute back-pain.

6. Having heard the learned counsel representing the parties and perused the pleadings, this court finds that the respondent is more than 60 years old whereas, petitioner is 70 years old. It is also not in dispute that respondent also filed a petition under S.125 CrPC, claiming therein maintenance from the petitioner, in the competent Court of law at Hamirpur.

7. Mr. Kush Sharma, learned counsel representing the respondent-wife, in support of his aforesaid contentions placed reliance upon the judgment rendered by this Court in **Urvashi Rana** versus **Himanshu Nayyar**, (CMPMO No. 177 of 2016) decided on 15.7.2016, reported in **Latest HLJ 2016(HP) 925**, to demonstrate that convenience of wife is required to be considered over and above the inconvenience of the husband.

8. Aforesaid judgment passed by this Court is based upon law laid down by the Hon'ble Apex Court in various cases including **Sumita Singh v. Kumar Sanjay and another** (2001) 10 SCC 41, wherein the Hon'ble Apex Court has observed that wife's convenience is required to be considered over and above the inconvenience of the husband. In **Rajani Kishor Pardeshi** versus **Kishor Babulal Pardeshi**, (2005) 12 SCC 237, Hon'ble Apex Court has held that the convenience of wife is of prime consideration.

9. Similarly, Hon'ble Apex Court in **Kulwinder Kaur alias Kulwinder Gurcharan Singh** versus **Kandi Friends Education Trust and others**, (2008) 3 SCC 659, has laid down parameters for transferring the cases i.e. balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; "interest of justice" demanding for transfer of suit, appeal or other proceedings, etc. While laying aforesaid broad parameters, Hon'ble Apex Court has further held that these are illustrative in nature and by no means can be taken to be exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a 'fair trial', in the Court from which he/she seeks

to transfer a case, it is not only the power, but the duty of the Court to make such order. The Hon'ble Apex Court has held as under:

“23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, certain broad propositions as to what may constitute a ground for transfer have been laid down by Courts. They are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; “interest of justice” demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding. They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the Court feels that the plaintiff or the defendant is not likely to have a “fair trial” in the Court from which he seeks to transfer a case, it is not only the power, but the duty of the Court to make such order.”

**10.** Similarly, Hon'ble Apex Court in **Arti Rani alias Pinki Devi and another** versus **Dharmendra Kumar Gupta**, (2008) 9 SCC 353, while dealing with a petition preferred by wife for transfer of proceedings on the ground that she was having minor child and it was difficult for her to attend the Court at Palamu, Daltonganj, which was in the State of Jharkhand and at a quite distance from Patna, where she was now residing, with her child, ordered transfer of proceedings taking into consideration convenience of wife.

**11.** In the case at hand, from the facts, as have been discussed above, which have not been refuted, it clearly emerges that at present, respondent resides at Hamirpur, which is definitely at a considerable distance from Dharamshala and respondent would be

put to unnecessary hardships and difficulties, especially when respondent is more than 60 years old lady.

**12.** Leaving everything aside, this Court can not lose sight of the fact that in case, prayer of the petitioner is acceded to and cases are transferred to Kangra at Dharamshala, respondent-wife will be burdened with unnecessary expenditure on account of transportation and engaging counsel at Dharamshala. There is also no denial that the respondent being an old aged lady, will be put to unnecessary harassment in traveling to Dharamshala to attend the court cases.

**13.** During proceedings of the case, attention of this Court was invited to the judgment passed by Hon'ble Apex Court in **Krishna Veni Nagam** versus **Harish Nagam**, (2017) 4 SCC 150, wherein Hon'ble Apex Court has held as under:

“We are of the view that if orders are to be passed in every individual petition, this causes great hardship to the litigants who have to come to this Court. Moreover in this process, the matrimonial matters which are required to be dealt with expeditiously are delayed. In these circumstances, we are prima facie of the view that we need to consider whether we could pass a general order to the effect that in case where husband files matrimonial proceedings at place where wife does not reside, the court concerned should entertain such petition only on the condition that the husband makes appropriate deposit to bear the expenses of the wife as may be determined by the Court. The Court may also pass orders from time to time for further deposit to ensure that the wife is not handicapped to defend the proceedings. In other cases, the husband may take proceedings before the Court in whose jurisdiction the wife resides which may lessen inconvenience to the parties and avoid delay. Any other option to remedy the situation can also be considered.

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17. We are thus of the view that it is necessary to issue certain directions which may provide alternative to seeking transfer of proceedings on account of inability of a party to contest proceedings at a place away from their ordinary residence on the ground that if proceedings are not transferred it will result in denial of justice.

18. We, therefore, direct that in matrimonial or custody matters or in proceedings between parties to a marriage or arising out of disputes between parties to a marriage, wherever the defendants/respondents are located outside the jurisdiction of the court, the court where proceedings are instituted, may examine whether it is in the interest of justice to incorporate any safeguards for ensuring that summoning of defendant/respondent does not result in denial of justice. Order incorporating such safeguards may be sent along with the summons. The safeguards can be:-

- i) Availability of video conferencing facility.
- ii) Availability of legal aid service.
- iii) Deposit of cost for travel, lodging and boarding in terms of Order XXV CPC.
- iv) E-mail address/phone number, if any, at which litigant from out station may communicate.”

**14.** Recently, the Hon'ble Apex Court in Transfer Petition (Civil) No. 1278 of 2016, titled **Santhini** versus **Vijaya Venketesh**, has overruled the judgment passed in **Krishna Veni Nagam** versus **Harish Nagam**, (2017) 4 SCC 150 (Supra). Relevant paras of aforesaid latest judgment are reproduced below:

“51. In this context, we may refer to the fundamental principle of necessity of doing justice and trial in camera. The nine-Judge Bench in Naresh Shridhar Mirajkar and Ors v. State of Maharashtra and Anr.46, after enunciating the universally accepted proposition in favour of open trials, expressed:-

“While emphasising the importance of public trial, we cannot overlook the fact that the primary function of the Judiciary is to do justice between the parties who bring their causes before it. If a Judge trying a cause is satisfied that the very purpose of finding truth in the case would be retarded, or even defeated if witnesses are required to give evidence subject to public gaze, is it or is it not open to him in exercise of his inherent power to hold the trial in camera either partly or fully? If the primary function of the court is to do justice in causes brought before it, then on principle, it is difficult to accede to the proposition that there can be no exception to the rule that all causes must

be tried in open court. If the principle that all trials before courts must be held in public was treated as inflexible and universal and it is held that it admits of no exceptions whatever, cases may arise where by following the principle, justice itself may be defeated. That is why we feel no hesitation in holding that the High Court has inherent jurisdiction to hold a trial in camera if the ends of justice clearly and necessarily require the adoption of such a course. It is hardly necessary to emphasise that this inherent power must be exercised with great caution and it is only if the court is satisfied beyond a doubt that the ends of justice themselves would be defeated if a case is tried in open court that it can pass an order to hold the trial in camera; but to deny the existence of such inherent power to the court would be to ignore the primary object of adjudication itself. The principle underlying the insistence on hearing causes in open court is to protect and assist fair, impartial and objective administration of justice; but if the requirement of justice itself sometimes dictates the necessity of trying the case in camera, it cannot be said that the said requirement should be sacrificed because of the principle that every trial must be held in open court.”

52. The principle of exception that the larger Bench enunciated is founded on the centripetal necessity of doing justice to the cause and not to defeat it. In matrimonial disputes that are covered under Section 7 of the 1984 Act where the Family Court exercises its jurisdiction, there is a statutory protection to both the parties and conferment of power on the court with a duty to persuade the parties to reconcile. If the proceedings are directed to be conducted through videoconferencing, the command of the Section as well as the spirit of the 1984 Act will be in peril and further the cause of justice would be defeated.
53. A cogent reflection is also needed as regards the perception when both the parties concur to have the proceedings to be held through videoconferencing. In this context, the thought and the perception are to be viewed through the lens of the textual context, legislative intent and schematic canvas. The principle may have to be tested on the bedrock that courts must have progressive outlook and broader interpretation with the existing employed language in the statute so as to expand the horizon and the connotative expanse and not adopt a pedantic approach.
54. We have already discussed at length with regard to the complexity and the sensitive nature of the controversies. The statement of law made in Krishna Veni Nagam (supra) that if either of the parties gives consent, the case can be transferred, is absolutely unacceptable. However, an exception can be carved out to the same. We may repeat at the cost of repetition that though the principle does not flow from statutory silence, yet as we find from the scheme of the Act, the Family Court has been given ample power to modulate its procedure. The Evidence Act is not strictly applicable. Affidavits of formal witnesses are



acceptable. It will be permissible for the other party to cross-examine the deponent. We are absolutely conscious that the enactment gives emphasis on speedy settlement. As has been held in *Bhuwan Mohan Singh (supra)*, the concept of speedy settlement does not allow room for lingering the proceedings. A genuine endeavour has to be made by the Family Court Judge, but in the name of efforts to bring in a settlement or to arrive at a solution of the lis, the Family Court should not be chained by the tentacles by either parties. Perhaps, one of the parties may be interested in procrastinating the litigation. Therefore, we are disposed to think that once a settlement fails and if both the parties give consent that a witness can be examined in video conferencing, that can be allowed. That apart, when they give consent that it is necessary in a specific factual matrix having regard to the convenience of the parties, the Family Court may allow the prayer for videoconferencing. That much of discretion, we are inclined to think can be conferred on the Family Court. Such a limited discretion will not run counter to the legislative intention that permeates the 1984 Act. However, we would like to add a safeguard. A joint application should be filed before the Family Court Judge, who shall take a decision. However, we make it clear that in a transfer petition, no direction can be issued for video conferencing. We reiterate that the discretion has to rest with the Family Court to be exercised after the court arrives at a definite conclusion that the settlement is not possible and both parties file a joint application or each party filing his/her consent memorandum seeking hearing by videoconferencing.

55. Be it noted, sometimes, transfer petitions are filed seeking transfer of cases instituted under the Protection of Women from Domestic Violence Act, 2005 and cases registered under the IPC. As the cases under the said Act and the IPC have not been adverted to in *Krishna Veni Nagam (supra)* or in the order of reference in these cases, we do intend to advert to the same.
56. In view of the aforesaid analysis, we sum up our conclusion as follows :-
  - (i) In view of the scheme of the 1984 Act and in particular Section 11, the hearing of matrimonial disputes may have to be conducted in camera.
  - (ii) After the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer.
  - (iii) After the settlement fails, if the Family Court feels it appropriate having regard to the facts and circumstances of the case that videoconferencing will sub-serve the cause of justice, it may so direct.
  - (iv) In a transfer petition, video conferencing cannot be directed.

- (v) Our directions shall apply prospectively.
- (vi) The decision in Krishna Veni Nagam (supra) is overruled to the aforesaid extent”

**15.** Accordingly, perusal of aforesaid judgment clearly suggests that in a transfer petition, video conferencing cannot be directed and hearing of matrimonial disputes is required to be conducted in camera. In the aforesaid judgment, Hon'ble Apex Court has further held that after the settlement fails and when a joint application is filed or both the parties file their respective consent memorandum for hearing of the case through videoconferencing before the concerned Family Court, it may exercise the discretion to allow the said prayer, but in transfer petition, video conferencing can not be directed.

**16.** After having carefully considered the material available on record, as well as submissions having been made by the learned counsel representing the parties and law laid down by the Hon'ble Apex Court, this court sees no justification for transferring the cases from Hamirpur to Dharamshala, as prayed for by the petitioner. Accordingly, both the petitions are dismissed being without merits.

**17.** All pending applications, in both the petitions, are disposed of. Record, if received, be sent back forthwith. Interim directions, if any, are vacated.

**(Sandeep Sharma)**  
**Judge**

**November 30, 2018**  
**(Vikrant)**