

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

CRWP-496-2015

Date of decision : 30.3.2015

Court on its own motion

....Petitioner

Versus

State of Punjab

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

By order.

.....

MAHESH GROVER, J.

On due consideration of the matter and noticing the fact that some girls most of them minor and few in a family way or even having children are languishing in protection homes for the sole offence of being in conflict with the societal norms mandating matrimony only with parental consent, I am of the view that confining such girls to protection homes against their wishes would imply curtailment of their liberties as enshrined in Article 19 of the Constitution of India and in the prescribed oppressive conditions in such homes clearly violative of Article 21 of the Constitution of India.

The court on stumbling upon these instances has chosen to treat these pleas of minor girls crying for freedom as Habeas

Corpus petition.

The question that confronts the court and begs an answer is whether individual freedom can be curtailed in abject subjugation to the diktats of a set of individuals or of the society collectively to deprive an individual of his liberty protected as a fundamental right and negating the principle of rule of law.

If this proposition is accepted, that societal norms bred from a feudal mindset or parochial considerations would override the principle of uniform applicability of law to the citizens of the country, then it would imply the negation of the principles prescribed in the Constitution of India, in particular Part-III thereof to result in conditions reflective of an anarchy.

The unfortunate girls referred to in the inspection note and the list of which is appended along with had dared to flout conventional norms to perform marriage without parental consent inviting the wrath of the parents and relatives who insist on matrimony only with their approval thus denying young people a choice in selecting a life partner.

These young girls have been confined to the protection home against their wishes, ironically on the orders of the courts which are meant to protect the liberty of citizens and enforce rule of law. The concern of the courts in such like matters ought to be to uphold the principles of law and not to confluence their views

with those of disgruntled parents to result in negation of civil liberties, more particularly those contained in Articles 19 and 21 of the Constitution of India.

Thus it would be necessary to extract the well propounded principles of protection of individual rights as contained in the observations of the Hon'ble Supreme Court of India in *Ashok Kumar Todi v. Kishwar Jahan and others* **2011(3) SCC 758 :-**

“17) In the earlier paragraphs, we have already adverted to certain factual details about the marriage of Rizwanur Rahman with Priyanka Todi. They themselves highlighted how they married and informed the same to the authorities concerned. The materials placed show that Rizwanur Rahman fell in love with Priyanka Todi, the daughter of Ashok Kumar Todi, and married her on 18.08.2007 under the Special Marriage Act, 1954. They also registered their marriage before the notified authority and obtained the certificate for the same. Pursuant to the same, Priyanka Todi left her father's house on 31.08.2007 and went to live in her husband's house at Tijala Lane within the jurisdiction of Karaya Police Station, Kolkata. She informed her father about their marriage and also informed the Police Commissioner as well as Dy. Commissioner of Police (South), Superintendent of

Police, 24 Parganas (S), the Officer-in-charge, Karaya Police Station and the Officer-in-charge, Bidhan Nagar Police Station. On a complaint made by Pradip Todi, Priyanka Todi and Rizwanur Rahman were summoned to Police HQ., Lalbazar, Kolkata on 08.09.2007 and the custody of Priyanka Todi was handed over to Anil Saraogi - her maternal uncle with condition that she will return to her husband after one week. Thereafter, the dead body of Rizwanur Rahman was found on 21.09.2007 on the railway tracks between Dum Dum and Bidhan Nagar Road Stations with injuries and his head smashed. We have also noted the details furnished by the mother and brother of the deceased about the interference by the various police officers in their marital efforts. In this regard, it is useful to refer to the law laid down by this Court in practice and procedure in a matter involving freedom of conscience and expression in terms of right to marry person of one's choice outside one's caste. The following observation and direction in Lata Singh vs. State of U.P. & Anr., (2006) 5 SCC 475 is relevant:

"17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation

unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the

couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. "

Even as early as in 1990, this Court has held that everyone associated with enforcement of law is expected to follow the directions and failure shall be seriously viewed and drastically dealt with. We also reiterate that the directions of this Court are not intended to be brushed aside and overlooked or ignored. Meticulous compliance is the only way to respond to directions of this Court. In the light of the direction in Lata Singh's case (supra), it is the duty of all persons in the administration/police authorities throughout the country that if any boy or girl who is major undergoes inter-caste or inter-religious marriage, their marital life should not be disturbed or harassed and if anyone gives such threat or commits acts of violence or instigates, it is the responsibility of the officers concerned to take stern action against such persons as provided by law."

The above observations emanate from an inter-religious marriage between a Muslim boy and a Hindu girl but where both of them were major. But even if they are not major it would at best invite consequences of violating a law mandating the age for matrimony or for that purpose even the legitimacy of the marriage itself but under no circumstances a person who is a minor and capable of understanding the nuances and complexities of life be forced to live in a protection home against his/her wishes. This would be in lines with the observations made by the Supreme Court of India as also some other important decisions emanating from different High Courts.

The High Court of Delhi in *Neetu Singh v. State*, 1999

(1) PLR (Delhi) 47

"7. It is thus clear that even if it is assumed that in the present case the petitioner Neetu Singh was a minor on the date of the marriage, even then as per the aforesaid position of law, the marriage is neither a void nor voidable. The only provision attracted is Sub-section 5 (iii) of Hindu Marriage Act, 1955, which by virtue of Section 18 thereof at best can lead to imprisonment of upto 15 days and/or fine which may extend to Rs.1,000/- or both.

8. In this view of the matter we hold that the petitioner Neetu Singh's marriage is neither void nor

voidable but at the highest is punishable under Section 18 of Hindu Marriage Act for contravention of provisions of Section (5)(iii). We respectfully agree with the view of the Allahabad and Himachal Pradesh High Courts and hold that even a minor cannot be detained against her wishes in Nari Niketan and such detention would be contrary to law."

Allahabad High Court in *Smt. Raj Kumari v. Superintendent, Women Protection House, Meerut and others* 1998CriLJ 654

"16. In view of the above it is well settled view of this Court that: even a minor cannot be detained in Government Protective Home against her wishes, In the instant matter petitioner has desired to go with Sunil Kumar, besides this according to the two medical reports i.e. of the Chief Medical Officer and LLRM, Medical College, Meerut, the petitioner is certainly not less than 17 years and she understands her well being and also is capable of considering her future, As such we are of the opinion that her detention in govt. Protective Home, Meerut against her wishes is undesirable and impugned order dated 23-11-1996 passed by the Magistrate directing her

detention till the party concerned gets a declaration by the Civil Court or the competent Court of law regarding her age, is not sustainable and is liable to be quashed.

17. In the result the writ petition succeeds and is allowed.

18. The impugned order dated 23-11-1996 passed by the City Magistrate, Bulandshahr in case No. 2/96 under Section 97/98 Cr.P.C. is quashed and the Supdt. Govt. Women Protective Home, Meerut is directed to set the petitioner at liberty according to her wishes.”

Since the court has chosen to treat these instances as Habeas Corpus pleas, suo motu, and finding that individual liberties are being abused and curtailed I henceforth direct that all the girls whose names have been mentioned in the appended proforma and who had performed marriage without parental consent and confined in Gandhi Vanita Ashram, Jalandhar be set free forthwith by adopting the following procedure :-

The Court of Judicial Magistrate Ist Class or the Chief Judicial Magistrate assisted by the Member Secretary of the Legal Services Authority, Punjab would summon the parents or the parents-in-law of such girls or even the gentlemen to whom they are married and ascertain their wishes as also of the girls before they are entrusted to them. In some of the cases it is

understandable that the parents may not be willing to take the girls back instantaneously, dictated by a sense of chastisement and a perceived dishonour or merely waiting with a hope that their daughters would outgrow passion for the boys with whom they have married.

In so far as the parents-in-law of such girls are concerned, the chances of their accepting the girls to their matrimonial homes would certainly be greater considering that their sons are facing prosecution and incarceration and the girls if accepted in the family would be the strongest insurance against the prosecution of their sons.

Wishes of each of the girls be ascertained and upon interaction with the parents or parents-in-law they be encouraged a rehabilitation in their homes. The court of the Chief Judicial Magistrate with the assistance of the Member Secretary Legal Services Authority, Punjab shall undertake this exercise instantly as keeping the girls in confinement against their wishes is not only violative of their rights but is also detrimental to their mental and physical health. It is also to be noticed that few of the girls are in family way and some have children in their laps which in turn suggest that the misery in which they are placed threatens to engulf their off-springs as well. Such can never be the mandate or dictates of a welfare society where a deviation from a societal norm is taken to be an affront of a magnitude inviting disastrous

criminal consequences as also personal destruction.

Those who cannot be entrusted to parents or parents-in-law may be retained in the protection home unless some other benign relative is ready to rehabilitate the unfortunate girl. But this would be on ascertaining the wishes of the girl and a verification by the Member Secretary, Legal Services Authority.

This Court on its visit had also noticed the deplorable state of affairs existing in the protection home. More than 30 girls were cramped in a small room with hardly any light or air. Similarly, the sanitation conditions were offensive. It would be a moot question that these young girls would be even getting all the requisites necessary for their personal hygiene. Apart from this, there would be issues related to the girls who are destitutes having no place to go and forced to live under the only roof available to them as a protection home. Such girls are likely to grow idlers in the absence of any educative facility or constructive activity available to them. Even though there is a semblance of a school being run in the protection home but that may not be sufficient if such girls are to be equipped with knowledge and skill to enable them to stand on their own feet. The Legal Services Authority in the State of Punjab may consider making arrangements on the following subjects, if permissible :-

- (1) Making available educational material to the inmates along with requisite infrastructure for skill development.

(2) Local institutions imparting education such as techniques of sewing, cooking, computers, fashion designing etc. be encouraged or roped in to make such training in vocational skills as this would be the best way to prepare these destitutes to meet the challenges of the society and to thwart exploitation.

(3) The court also noticed that few of the inmates were the ones who did not even know their addresses either having been abducted or simply having been lost. Since their addresses are unknown, it would be very difficult for the authorities to trace out their families. Look out notices in the region may not be of any help. Thus, it would be helpful if the Legal Services Authority would consider getting in touch with the Legal Services Authorities of the different States in turn to give out such look out notices with the help of local administration which possibly may result in the information travelling to wider reaches thus opening the possibility of success in tracing out families. Two of the girls from their facial and physical appearances appear to be from Nepal or Uttrakhand. This is only to suggest that these may form some parameters where more intensive search or information can be spread as physical features are a give away of the region to which a person belongs.

Disposed of.

30.3.2015
dss

(MAHESH GROVER)
JUDGE