

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP No. 978 of 2015
Date of Decision:- 19.10.2015

Kulwant Kaur

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Ajay Pal Singh Rehan, Advocate
for the petitioner.

Mr. Varun Sharma, A.A.G., Punjab, for the State.

Mr. Arun Takhi, Advocate
for respondent No.4.

SHEKHER DHAWAN, J.

Present criminal writ petition under Article 226 of the Constitution of India, for directing respondent Nos.2 and 3, to produce detenue-Ramjot Kaur.

2. On filing of writ petition, notice was issued to respondents and detenue-Ramjot Kaur was produced in Court on 31.07.2015. On request of learned counsel for the petitioner, the petitioner was allowed to talk to the alleged detenue in the Court and at that stage Ramjot Kaur stated that she wanted to accompany her husband only and sought time to file affidavit. Thereafter, she has filed affidavit.

3. Learned counsel for petitioner submitted that petitioner is just

of the age of 16 years and 5 months, as her date of birth is 28.01.1999. She was enticed away by respondent No.4 on the pretext of marriage on 19.05.2015. Birth certificate of Ramjot Kaur is Annexure P-1 on the file. She could not perform marriage as per law and her marriage, if any, is void and she be directed to go back to the custody of present writ petitioner. In support of his arguments, learned counsel for the petitioner placed reliance upon judgment from a Co-ordinate Bench of this Court in case **Amninder Kaur and another Vs. State of Punjab and others**, 2010(1) R.C.R. (Civil) 191, wherein, Co-ordinate Bench had taken the view that marriage in such like cases are void and they are not entitled to protection. Co-ordinate Bench also took the view that persons, who are in some-way party to the such child marriage, are also liable for punishment under Sections 10 and 11 of Prohibition of Child Marriage Act, 2006.

4. Learned counsel for respondent No.4 submitted that detenue Ramjot Kaur had performed marriage with her free consent. She is not in illegal detention of anybody rather she is living with her husband happily and as such the present writ petition under Article 226 of the Constitution of India is not maintainable.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that on petition, having been filed by petitioner, notice was issued to the respondents and detenue Ramjot Kaur was produced in Court and at that time petitioner was allowed to talk to Ramjot Kaur and she had shown her willingness to go with her husband and thereafter filed an affidavit in the Court.

6. Identical matter had gone before Hon'ble Division Bench of Rajasthan's High Court in case **Bhera Ram Vs. The State of Rajasthan and others, 2015(2) DNJ (Raj.) 467**, where Habeas Corpus petition under Article 226 of the Constitution of India was filed. Hon'ble Division Bench from Rajasthan's High Court observed that detenue though minor was in position to understand all consequences of entering into a wedlock without permission of her parents and Hon'ble Division Bench deemed it appropriate to leave the minor detenue to move as per her will and wishes and in that case also the husband was present and detenue wanted to go with the company of her husband and she was allowed to go with her husband accordingly.

7. Identical matter was before Co-ordinate Bench of this Court in case **Satnam Singh Vs. State of Punjab and others, 2011(7) R.C.R. (Criminal) 2579**, where detenue was minor and writ petition was filed under Article 226 of the Constitution and Co-ordinate Bench took the view that Habeas Corpus can only be issued when the detention against the wishes of a person and if not, otherwise petition is liable to be dismissed.

8. In view of above facts, the present writ petition is not maintainable and same stands dismissed.

October 19, 2015
naresh.k

(**SHEKHER DHAWAN**)
JUDGE