

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

CRM-M-38371-2016

Date of decision: 29.11.2016

Shikha and another

...Petitioners

Versus

U.T. Chandigarh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vikram Sheoran, Advocate,
for the petitioners.

Mr. Amit Kumar Goyal, APP,
for U.T. Chandigarh.

Mr. Anil Kumar Ahluwalia, Advcoate,
for respondent No.4.

JAISHREE THAKUR, J.

The instant petition has been filed seeking protection of the life and liberty of the petitioners with a further direction that respondent No.4 should not interfere in their married life.

A Coordinate Bench of this Court having doubt with regard to the age of petitioner No.1, directed the petitioner to be sent to protection home at Chandigarh and as far as petitioner No.2 was concerned, the SSP, Chandigarh was directed that in case petitioner No.2 has already moved an application for seeking protection, the same would looked into.

An appearance has been put in on behalf of the complainant-father of petitioner No.1, who alleges that his daughter is a minor and was born on 22.12.1998. In this regard, he has placed on record a photocopy of the Transfer Certificate issued by Government Model Senior Secondary School, Sector 38(West), Chandigarh as well as the Birth Certificate issued by the Municipal Corporation, Chandigarh, which too reflects the date of

birth to be 22.12.1998. By relying upon the aforesaid documents, the counsel for the complainant argues that being a minor, the petitioner No.2 cannot enter into matrimony being underage. At best, she should be sent to the protection home till she attains the age of majority.

Counsel for the petitioner pointed out that the petitioner No.1 as on date is 23 days short of being a major and is a person competent to take a decision as to whether she wants to reside with her husband or be sent back into the protection home.

I have heard the learned counsel for the parties and have perused the record of the case.

The petitioner is present in Court, who at the same time asserts that she has consciously taken this decision to marry petitioner No.2 and wants to reside with him. The argument raised that petitioner No.1 is a minor and should be sent to protection home would be of no bearing on account of the fact that she solemnized the marriage with petitioner No.2 without any pressure, threat or coercion from anyone and as per her own statement would like to reside with her husband. At best, the marriage would be voidable and hit by the provisions of Child Marriage Act/Hindu Marriage Act, 1955 but such marriage would then be voidable at the instance of the contracting party who would be a child at the time of the marriage. In the instant case, the statement of the minor is to the effect that she wants to reside with her husband.

Furthermore, it is noted that a statement was recorded under Section 164 Cr.P.C. in proceedings in FIR No.175 dated 26.10.2016 under Sections 363, 366-IPC, Police Station Maloya, Chandigarh. Petitioner No.1

has admitted to the factum of marriage and has made a statement that she would like to reside with her husband.

A Coordinate Bench of this Court was seized of this in a similar matter and after consideration of the issue at hand, came to the conclusion that in case a person got married with their own free choice, the marriage at the most would be voidable, but that would not disentitle them to the protection sought.

In view of the law laid down in **Neelam Rani and another vs. State of Haryana and others** 2011(1) RCR 3, the above noted petition stands disposed of.

Petitioner No.1 being 23 days short of attaining majority is entitled to go with petitioner No.2 and in case an application is moved for seeking protection, the same shall be duly considered and looked into.

Without entering upon an exercise to evaluate the evidentiary value of the documents placed on the file, I dispose of this petition with directions to respondent No. 2-Senior Superintendent of Police, Chandigarh to decide the representation of the petitioners (Annexure P-4) within a period of one month from the date of receipt of the certified copy of this order and grant them protection, if any threat to their lives and liberty is perceived. It is made clear that this order shall not be taken to protect the petitioners from legal action for violation of law, if any committed by them.

Disposed of accordingly.

29.11.2016

Dinesh

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No.
Yes/No.