

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

CWP No.4511 of 2016

Date of Decision:- 10.3.2016

Gurdeep Singh and another

.....Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Nand Lal Sammi, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J.

There is an unusual prayer made in this petition, wherein petitioner No.1, allegedly born on 26.11.1993, aged 23 years, educated upto 10+2, is serving in the Home Guard and petitioner No.2, allegedly born on 8.12.1998, presently 17 years and 3 months old and is educated upto 10+1. Petitioner No.1 belongs to Kumhar caste (BC), whereas petitioner No.2 is a Bishnoi. They have approached this Court seeking direction to respondents No.1 to 3 to grant them police protection to save their life and liberty which is allegedly being threatened at the hands of respondents No.4 to 8, who are the relatives of petitioner No.2. It is averred in the petition that the petitioners have not yet been married as they have planned to get married after petitioner No.2 attains the age of majority i.e. 18 years of age but they are afraid

that before petitioner No.2 becomes major, she may not be got married by the private respondents. Petitioner No.2 has also made allegation against her mother for having illicit relations with respondent No.5.

Learned counsel for the petitioners has argued that Article 21 of the Constitution of India provides that *“no person shall be deprived of his life or personal liberty except according to a procedure established by law”*. He has relied upon a Division Bench judgment of this Court rendered in the case of **“Rajwinder Kaur and another Vs. State of Punjab and others”** 2014(4) RCR (Criminal) 785, and the two judgments of Single Bench, namely, **“Rukshana and another Vs. Govt. of NCT of Delhi and others”** 2007(3) RCR (Criminal) 542 and **“Ridhwana and another Vs. U.T. Administration and others”** 2008(4) RCR (Criminal) 242. It is submitted that the petitioners have a constitutional right and it is an obligation on the part of the State to protect their life and liberty, which is being threatened by respondents No.4 to 8 as they are against their marriage.

I have heard learned counsel for the petitioners and perused the record.

There is no dispute that petitioner No.2 is a minor. Insofar as the decision in the case of **Rajwinder Kaur and another (Supra)** is concerned, it was a case where both the appellants were major and had solemnized marriage against the wishes of the parents and family members of the wife. The learned Single Judge dismissed the petition on the ground that the

marriage is totally invalid due to the fact that they belong to different religions and the second appellant had failed to prove that he had embraced religion of the first appellant before such marriage. It is in this background this Court had held that even if the appellants did not perform valid marriage, they are entitled for protection of their life and liberty.

In the case of ***Rukshana and another (Supra)***, petitioner No.1 was 16 years and 6 months old. Her father Zulfiqar Ahmad registered an FIR under Sections 363, 366A, 368 and 120B of the IPC against Rahamate Azam. The Court had found that they have already got married and the question for the determination was as to whether any offence of which Rahamate Azam was implicated has been made out or not? The Court held that since both of them had been living together as husband and wife and were also blessed with a child, the petition for quashing of the FIR was accepted.

In the case of ***Ridhwana and another (Supra)***, it was held that if the girl was 16 years and 4 months old at the time of her marriage, she had not committed any offence and hence, her parents were directed not to interfere in her peaceful married life. However, this Court had passed an order in the case of ***“Amnider Kaur and another Vs. State of Punjab and others”*** 2010 (1) RCR (Criminal) 261, in which the girl was a minor of 16 years and 2 months of age and got married to a boy, who was major at that time. They filed a petition under Section 482 of the Cr.P.C. for seeking a direction to protect their life and liberty, which was

alleged to have been threatened by the parents of the girl because she had got married against their wishes. In that case, the girl was a Brahmin and the boy was a Jat Sikh. This Court had observed that the girl was minor at the time of her alleged marriage and was rather a child in terms of Section 2(a) of the Prohibition of Child Marriage Act, 2006 [for short 'the Act'] and if she has been enticed away from the lawful custody of her parents then the said marriage is void.

In all the aforesaid cases, the petitioners had approached this Court after their marriage for seeking protection to their life and liberty but in the present case, the petitioners have approached this Court before their marriage in which petitioner No.2 is admittedly a minor. According to the Indian Majority Act, 1875, the age of majority for a girl is 18 years. In the present case, petitioner No.2 is admittedly of the age of 17 years and 3 months, therefore, she is a minor. In a given case, the girl could be of 10/12 years also. The question would be as to whether she can also claim the protection to her life and liberty in the name of her marriage? Or in other words can she claim emancipation?

The decision in the case of ***Amnider Kaur and another (Supra)*** is delivered by me and in that case I had opened my judgment expressing my feelings, which is experienced by everyone everyday and are being quoted in this case as well "*this Court is flooded with the petitions filed by run-away couples in which the girls, who have just attained the majority, are filing petitions seeking protection for life and liberty allegedly threatened by their patents,*

who could be seen wailing helplessly and haplessly chasing their daughters in the corridors of this Court, who out of infatuation, are marrying young boys who could hardly provide them any future”.

According to me, in order to maintain public order, it is the high time that this type of prayers made through these petitions, in the name of Article 21 of the Constitution of India, should be discouraged otherwise, the time would come when boys and girls of the tender age, even below 14 years, would come to the Court filing petitions against their parents in the name of asking for their right of life and liberty for the purpose of getting married.

On the one hand, Section 9 of the Act provides punishment to a male adult above the age of 18 years, contracting a child marriage, with the rigorous imprisonment which may extend to two years and also fine which may extend to one lakh rupees or both and Section 10 of the Act provides for punishment for those, who performs, conducts or directs or abets any child marriage with rigorous imprisonment, which may extend to two years and also fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage and on the other hand, the petitioners have approached this Court for endorsing their illegal act, which should be strongly deprecated by the Court as it has to punish for the offence and not to promote it in the name of sympathy. It is also a disturbing feature that petitioner No.2 being minor has filed this petition through her next friend because a minor cannot enter into a contract as she suffers from legal disability but at the same time,

she is seeking protection from the Court for contracting marriage, which otherwise would not be valid under Section 5 of the Hindu Marriage Act, 1955.

Thus, the prayer made by the petitioners for providing them police protection is totally uncalled for in the given facts and circumstances and hence, the present petition is hereby dismissed.

10.03.2016

Vivek

(RAKESH KUMAR JAIN)
JUDGE