

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

CRM-M-23541 of 2016

Date of Decision: August 08,2017

Jaspal Singh and others

....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM:HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. L.S.Mann, Advocate
for the petitioners.
Mr. Randeep Singh Khaira, Assistant Advocate
General, Punjab.

ARVIND SINGH SANGWAN, J.

Petitioners-Jaspal Singh, Tajinder Kaur, Raj Sikander and Amarjit Kaur have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing FIR No.115 dated 19.8.2015, (Annexure P3) under Sections 10/11 of Prohibition of Child Marriage Restraint Act, 2006 ('Act' for short), registered at Police Station Division No.2 , District Ludhiana.

Brief facts of the case are that the son of petitioner No. 1 and 2, namely, Satinderpal Singh and daughter of petitioners No. 3 and 4, namely, Vipinjit Kaur filed CRM-M-13711 of 2015 in this Court praying for issuance of direction to safeguard their life and liberty as they had performed marriage on 25.4.2015 without the consent of the petitioners. In

this petition (At Annexure P1), it was alleged that the aforesaid Vipinjit Kaur's date of birth is 18.12.1996 and Satinderpal Singh's date of birth is 19.2.1995. While issuing notice of motion on 29.4.2015, the following order was passed by this Court:-

“ Petitioner no. 2 is stated to be less than 21 years of age.

Notice of motion, for 28.08.2015.

On the asking of Court, Mr. Gurveer Sidhu, AAG, Punjab accepts notice on behalf of respondents no. 1 to 3.

Let requisite number of copies of paper-book be supplied to learned State counsel during course of the day.

In the meanwhile and without commenting on the validity of marriage of correctness of ages of the petitioners, respondent no. 2-Commissioner of Police, Ludhiana is directed to look into the allegations contained in representation dated 25.04.2015(Annexure P-4) and if warranted, take appropriate steps in accordance with law.

It is made clear that if a complaint for criminal offence or an FIR is pending, this order shall not cause any hindrance in those proceedings.

Both the petitioners are directed to remain present in Court on the next date of hearing.

Respondent no. 2 would also file response as to

what proceedings have been initiated for violation of provisions of the Prohibition of Child Marriage Act, 2006."

Thereafter, the petition was disposed of, on the basis of the statement made by the State Counsel that both the petitioners have stated before the Police that there is no threat perception to them, vide order dated 28.8.2015 which reads as under:-

"This petition under Section 482 Cr.P.C. has been filed by the petitioners seeking direction to respondents No. 2 and 3 to protect their life and liberty at the hands of respondents No. 4 to 10 as they entered into matrimony against their wishes.

Learned counsel for the petitioners as well as State Counsel on instructions from ASI Kapil Kumar submits that statements of both the petitioners were recorded wherein they stated that there is no threat perception to them.

In view of the above, no further indulgence of this Court is required and the instant petition is disposed of as such."

Later on, the present FIR was registered against the petitioners being parents of aforesaid Vipinjot Kaur and Satinderpal Singh for the violation of Sections 10/11 of the Act with the allegations that the age of Satinderpal Singh was less than 21 years. The present petition has been filed by their parents for quashing of the aforesaid FIR. In pursuance to the notice of motion issued on 29.7.2016, reply has been filed.

Learned counsel for the petitioners has submitted that, in fact, the petitioners have no role in the alleged marriage of Vipinjot Kaur and

Satinderpal Singh as, admittedly, both have performed marriage against the wishes of their parents and have filed a petition for protection as a runaway couple in this Court on 27.4.2015 (Annexure P1) and the same was disposed of vide order dated 28.8.2015. It is further submitted that from perusal of the petition (Annexure P1) filed by the children of the petitioners, it is apparent that they were apprehending threat to their life and liberty at the hands of the petitioners as they had performed love marriage of their own consent and the same was not acceptable to the petitioners and, thus, at no point of time, petitioners were instrumental in performing their marriage and, therefore, they are not liable for any punishment for solemnising a child marriage. It is also submitted that the petitioners were not even present at the time of marriage which, though, later on, was accepted by the parents considering the larger interest of the children as well as both the families. Learned counsel has also submitted that a perusal of the FIR shows that the same has been registered in the light of the directions given by this Court to inform about initiation of any proceedings of violation of the provisions of the Act and, therefore, the petitioners have been named in the present FIR and, in fact, neither the Priest, who performed the marriage nor the persons, who were witnesses of the marriage, were arrayed as accused in the FIR.

Learned counsel for the petitioners further submitted that, in fact, it is not a case where the petitioners were directly or indirectly involved in the solemnisation of the marriage or were instrumental in the promotion of the solemnisation of the child marriage. The girl-Vipinjit Kaur was, admittedly, above the 18 years of age and the boy-Satinderpal

Singh was nearing the age of 21 years and both of them were capable of thinking their well being and had performed marriage against the wishes of the petitioners.

Learned counsel for the State, in response, has submitted that the FIR has been registered only in pursuance to the order dated 29.4.2015 and the final report under Section 173 Cr.P.C. will be submitted after the completion of investigation and prayed for dismissal of the petition.

After hearing the learned counsel for the parties, I am of the opinion that in the present petition FIR is not legally sustainable against the petitioners.

Section 10 and 11 of the Act read as under:-

“10. Punishment for solemnising a child marriage.-Whoever performs, conducts or directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to 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.

11.Punishment for promoting or permitting solemnisation of child marriages.-

(1)Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organization or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from

being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend upto one lakh rupees:

Provided that no woman shall be punishable with imprisonment.

(2)For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised. "

A perusal of the above provisions show that the whoever permits or promote solemnisation of child marriages is liable to be punished under the Act. There is no allegation that the petitioners either solemnised the marriage of their children or promoted the solemnisation of the marriage of their children. Rather a perusal of the petition (Anneuxre P1) filed by their children clearly show that the petitioners as their respective parents were protesting against their marriage and, therefore, both the children filed the aforesaid petition CRM-M-13711-2015 in this Court where they have stated that they are facing life threat at the hands of the present petitioners.

Since on the face of it, it is apparent that the petitioners were never associated in the performance of the marriage of their children, no offence under Section 10/11 of the Act is made out.

Accordingly, this petition is allowed. FIR No.115 dated 19.8.2015, under Sections 10/11 of the Act, registered at Police Station Division No.2

District Ludhiana is hereby quashed.

(ARVIND SINGH SANGWAN)
JUDGE

August 08 2017
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Whether speaking/reasoned: Yes/No

Whether Reportable:Yes/No