

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

**CRM-M No.38667 of 2016
Date of Decision: 29.03.2017**

Baljeet Kaur and anotherPetitioners

Versus

State of Punjab and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Arun Sharma, Advocate
for the petitioners.

Ms. Rimplejeet Kaur, AAG, Punjab.

Mr. O.P. Kamboj, Advocate
for respondent No.4.

RAJ MOHAN SINGH, J.

[1]. Petitioners have filed the present petition for issuance of necessary direction to the respondents not to harass them and to ensure safety of their lives and personal liabilities from being invaded at the hands of private respondents No.4 to 8.

[2]. Petitioners pleaded that they developed liking for each other and ultimately decided to marry against wishes of their families. They belonged to different caste and ultimately, they performed marriage on 24.10.2016 as per Hindu rites and ceremonies.

[3]. Vide order dated 26.10.2016, the High Court on the basis of conflict in date of birth of both the Aadhaar Cards of petitioner No.1 passed the following order:-

“Petitioners duly identified by the counsel are present.

Ms.HK Sandhu, Advocate has appeared and filed her power of attorney on behalf of respondent No.4-Gopal Singh, father of Baljeet Kaur (petitioner No.1), which is taken on record.

Petitioner No.1 Baljeet Kaur being her date of birth 12.2.1998 and petitioner No.2 Subhas Kumar being his date of birth 1.1.1992, as per Aadhaar Card (Annexure P-1) No. 4575 3539 1574 and Aadhaar card (Annexure P-2) No.5208 4043 0147 respectively issued by Govt. of India are major.

On the other hand, Gopal Singh- respondent No.4, father of Baljeet Kaur (petitioner No.1) has also produced another Aadhaar Card No.4575 3539 1574 issued by Govt. of India, wherein the date of birth of Baljeet Kaur (petitioner No.1) is recorded as 1.1.1999, which means that as on today she is 17 years, 9 months and 25 days aged. In addition to the said document, Gopal Singh has also produced a photostate copy of school leaving certificate of Baljeet Kaur (petitioner No.1) wherein her date of birth is mentioned as 8.8.1999. No doubt the date of birth of Baljeet Kaur mentioned in the Aadhaar card and the school leaving certificate produced by Gopal Singh is different but as per none of the said documents, she has so far attained the age of majority i.e. 18 years.

The petitioners allege to have married on 24.10.2016. At this stage the validity of the marriage is not the contentious issue. What is to note that two Aadhaar Cards of same number with different

particulars i.e. date of birth of Baljeet Kaur (petitioner No.1) have been produced by the parties. Apparently either of the Aadhaar card is not a genuine document.

Accordingly, both the Aadhaar Cards are sent to Forensic Science Laboratory, Chandigarh for verification and examination to ascertain their authenticity and for reporting to this Court as to which of them is a genuine/ forged document.

For separate identification of both the Aadhaar cards produced by the parties, Aadhaar card bearing date of birth as 12.2.1998 is marked as 'A1' and Aadhaar card bearing date of birth as 1.1.1999 is marked as 'A2'.

Further photocopy of the school leaving certificate of Baljeet Kaur (petitioner No.1) produced by Gopal Singh is sent to the Police Station, in whose jurisdiction village Kallar Khera, District Fazilka falls, for getting the same verified. The report be sent to this Court on the next date of hearing.

Considering the aforesaid peculiar circumstances and the fact that the instant petition has been filed for grant of protection of life and liberty of the petitioners, which is in danger at the hands of respondents No.4 to 8, Baljeet Kaur (petitioner No.1) being a minor is sent to the Protection Home at Chandigarh and will be produced in the court again on the next date.

Notice to the respondent-State for 15.11.2016.

As far as petitioner No.2 Subhas Kumar is concerned, respondent No.2, Senior Superintendent of Police, Fazilka is directed that in case, petitioner No.2

moves an application before him seeking protection for his life, he will order for the needful to be done.

A copy of this order under the signatures of the Reader of this Court be given to the police official of Police Station Sector 3, Chandigarh, who will send a lady police official to accompany petitioner No.1 to the Protection Home.”

[4]. On 15.11.2016, following order was passed by Coordinate Bench of this Court:-

“Despite order passed on the last date of hearing for sending the Aadhaar Card to Forensic Science Laboratory, Chandigarh for verification and examination in order to ascertain which of them is authentic and genuine document, the Registry has not done the needful.

Learned State counsel submits that a birth certificate issued by Registrar, Births and Deaths, Saadulsheher, District Ganganagar of petitioner No.1-Baljeet Kaur has also been produced by her parents which is also to be verified from the concerned quarter. The Aadhaar Cards filed by the parties in compliance of order of this Court dated 26.10.2016 be sent to Forensic Science Laboratory, Chandigarh for its report.

List on 02.12.2016.

Learned State counsel will also get the birth certificate verified.

Petitioner No.1-Baljeet Kaur, who has been produced by LC Rekha, will be taken back to the Protection Home and she be produced in the Court on the date fixed.

A copy of this order under the signatures of the Reader of this Court be given to LC Rekha.”

[5]. In due course the case was again listed on 07.12.2016 and the following order was passed by Coordinate Bench of this Court:-

“Petitioner No.1-Baljeet Kaur has been produced by LC Monika Sharma in the Court today as she is residing in the Protection Home, Chandigarh.

Report of Forensic Science Laboratory, Chandigarh with regard to the Aadhar Cards both having same No.457535391574 but the Aadhar Card marked as 'X' having the date of birth of petitioner No.1-Baljeet Kaur as 12.02.1998 and the other marked as 'Y' having the date of birth 01.01.1999, has been received. After examination, it has been reported that genuine sample copy of Aadhar card of the same No.457535391574 from Unique Identification Authority of India is needed to opine the genuineness or the authenticity of the disputed Aadhar Cards marked as 'X' and 'Y'. When this Court had sent these Aadhar Cards to Forensic Science Laboratory, Chandigarh to opine which out of them was genuine, whatever was required for giving the report should have been done by the Director of Forensic Science Laboratory, Chandigarh. As such, it is again referred to Forensic Science Laboratory, Chandigarh to obtain the genuine sample copy of concerned Aadhar Card from Unique Identification Authority of India in order to give definite opinion as to which of the two is a genuine document.

Required be done by the Registry.

The petitioner No.1-Baljeet Kaur be taken back by LC Monika Sharma to the Protection Home and be produced again in the Court on the next date of hearing.

Posted to 06.02.2017.

Learned counsel for respondent No.4 submits that in the meantime, the matter be referred to Mediation and Conciliation Centre of this Court for some amicable settlement and the counsel for the petitioner has agreed to the same.

The matter is accordingly referred to Mediation and Conciliation Centre of this Court. The date for the meeting of the parties will be fixed by the Nodal Officer and will be intimated to the Protection Home so that petitioner No.1-Baljeet Kaur can also attend the meeting.

The Incharge of the Protection Home shall ensure that Baljeet Kaur is sent to the Mediation Centre for the meeting along with some lady police official. Petitioner No.2 and his parents as well as respondents No.4 to 8, family members of petitioner No.1 will attend the meeting.

Reply by way of affidavit of Sh. Achhru Ram, Deputy Superintendent of Police, Sub Division Abohar, District Fazilka filed by learned State counsel on behalf of respondents No.1 to 3 is taken on record.

Copy of this order be given under the signatures of the Reader of this Court to LC Monika Sharma.”

[6]. As per report sent by Central Forensic Science Laboratory dated 30.01.2017, it has been communicated that there were no genuine sample copy of the Aadhaar Card for comparison of the disputed Aadhaar Cards No. “457535391574” with date of birth 12.02.1998 on the Aadhaar Card marked 'X' and date of birth 01.01.1999 on the Aadhaar Card Marked 'Y'. Details of both the Aadhaar Cards marked 'X' and 'Y' were sent to the Unique Identification Authority of India (UIDAI) by the Director, CFSL, Chandigarh on 19.12.2016 for the verification of details of both the Aadhaar Cards from the data base available with the UIDAI. The authority in its letter dated 18.01.2017 has stated that Aadhaar Card No. “457535391574” was generated vide enrollment on 02.08.2011 in the name of Baljeet Kaur with date of birth 01.01.1999. Later on, the person concerned got her Aadhaar Card updated on 27.09.2016 with date of birth 12.02.1998 in the name of Baljeet Kaur by using PDS Photo Card as Proof of Identity (POI) and Certificate of Address issued by village Panchayat Head as proof of address. Therefore, UIDAI found both the Aadhaar Cards to have been generated by UIDAI.

[7]. The controversy in terms of age as of now becomes in consequential in view of the fact that age of petitioner No.1 is computed even from both the date of birth of petitioner No.1

proves to be above 18 years of age as of now. Petitioner No.1 cannot to be treated to be minor now.

[8]. In **Smt. Lila Gupta Vs. Laxmi Narain and others, AIR 1978 Supreme Court, 1351**, the Hon'ble Apex Court proceeded to held in the following manner:-

“A comprehensive review of the relevant provisions of the Act unmistakably manifests the legislative thrust that every marriage solemnised in contravention or one of other condition prescribed for valid marriage is not void. Section 5 prescribes six conditions for valid marriage. Section 11 tenders marriage solemnised in contravention of conditions (i), (iv) and (v) of Section 5 only, void. Two incontrovertible propositions emerge from a combined reading of Sections 5 and 11 and other provisions of the Act, that the Act specifies conditions for valid marriage and a marriage contracted in breach of some but not all of them renders the marriage void. The statute thus prescribes conditions for valid marriage and also does not leave it to inference that each one of such conditions is mandatory and a contravention, violation or breach of any one of them would be treated as a breach of a prerequisite for a valid marriage rendering it void. The law while prescribing conditions for valid marriage simultaneously prescribes that breach of some of the conditions but not all would render the marriage void. Simultaneously, the Act is conspicuously silent on the effect on a marriage solemnised in contravention or breach of the time bound prohibition

enacted in Section 15. A further aspect that stares into the face is that while a marriage solemnised in contravention of clauses (iii), (iv), (v) and (vi) of Section 5 is made penal, a marriage in contravention of the prohibition prescribed by the proviso does not attract any penalty. The Act is suggestively silent on the question as to what is the effect on the marriage contracted by two persons one or both of whom were incapacitated from contracting marriage at the time when it was contracted in view of the fact that a period of one year had not elapsed since the dissolution of their earlier marriage by a decree of divorce granted by the Court of first instance. Such a marriage is not expressly declared void nor made punishable though marriages in breach of conditions Nos.(i), (iv) and (v) are expressly declared void and marriages in breach of conditions Nos. (iii), (iv), (v) and (vi) of Section 5 are specifically made punishable by Section 18. These express provisions would show that Parliament was aware about treating any specific marriage void and only specific marriages punishable. This express provision prima facie would go a long way to negative any suggestion of marriage being void though not covered by Section 11 such as in breach of proviso to Section 15 as being void by necessary implication. The net effect of it is that at any rate Parliament did not think fit to treat such marriage void or that it is so opposed to public policy as to make it punishable.

Similarly, a reference to Child Marriage Restraint Act would also show that the Child Marriage

Restraint Act was enacted to carry forward the reformist movement of prohibiting child marriages and while it made marriage in contravention of the provisions of the Child Marriage Restraint Act punishable, simultaneously it did not render the marriage void. It would thus appear that voidness of marriage unless statutorily provided for is not to be readily inferred.

Thus, examining the matter from all possible angles and keeping in view the fact that the scheme of the Act provides for treating certain marriages void and simultaneously some marriages which are made punishable yet not void and no consequences having been provided for in respect of the marriage in contravention of the proviso to Section 15, it cannot be said that such marriage would be void.”

[9]. The legal position as culled out from different precedents can be summed up to the effect that even a minor cannot be sent to Nari Niketan against her wishes. The marriage of minor cannot be stated to be void. The parties to such a wedlock can only be punished under Section 18(5) of the Hindu Marriage Act.

[10]. In **Neetu Singh Vs. State, 1999 (3) RCR (Criminal) 26**, it was held by the Division Bench of Delhi High Court that the marriage of minor is neither void nor voidable. The ratios of **Mrs. Kalyani Chaudhary Vs. State of UP and others, 1978 Cr.L.J.1003** and **Seema Devi @ Simaran Kaur Vs. State of**

HP, 1998 (2) Crimes 168 were followed.

In Seema's Devi's case (supra), it was held that minor girl should be allowed to go with her husband and the Court cannot pass an order against her wishes even if she is minor.

[11]. It is a settled principle of law that if the corpus has given birth to a child in Nari Nikaten, then keeping the corpus in Nari Niketan is not proper and she may be released from Nari Niketan. Firstly, preference be made to her for living with her natural guardian. If she refuses, then she may be allowed to live according to her free will. The marriage of minor in contravention of Section 5 of the Hindu Marriage Act is neither void nor voidable unless it is so declared by the competent Court. The case filed under the present jurisdiction is not sufficient to declare the marriage to be void or voidable. The welfare of a minor has to be seen. The aforesaid proposition was reiterated by this Court in Shamsher Vs. U.T. Chandigarh and another, 2011(5) RCR (Criminal) 677 and Balwinder Singh @ Binder Vs. State of Punjab and others, 2008 (3) RCR (Criminal) 1.

[12]. During course of hearing and interaction with petitioner No.1, she showed her willingness to go with the husband.

[13]. In view of above, I deem it appropriate to dispose of this petition with a direction to Senior Superintendent of Police,

Fazilka to take custody of petitioner No.1 forthwith and facilitate her to reach destination of her own choice.

[14]. Disposed of accordingly.

29.03.2017
prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No