

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

CRM-M No. 45786 of 2016

Date of Decision: 10.01.2017

JAGDEEP SINGH AND ANOTHER

-PETITIONERS

VS

STATE OF PUNJAB AND OTHERS

-RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Shakti Mehta, Advocate
for the petitioners.

Ms. Ashima Mor, Advocate
for UT, Chandigarh.

Mr.Shilesh Gupta, Addl. A.G., Punjab.

RAJ MOHAN SINGH, J. (ORAL)

{1}. Petitioners seek issuance of necessary directions to respondents No.2 and 3 for providing security to the petitioners and also not to harass the petitioners on the basis of false accusation.

{2}. On 22.12.2016, the petitioners were present in Court and were duly identified by learned counsel for the petitioners. The date of birth of petitioner No.2 was found to be 10.06.1999

and she was found to be minor at the time of solemnization of marriage with petitioner No.1.

{3}. On 22.12.2016, following order was passed:-

“Petitioners duly identified by the counsel are present.

It is submitted on behalf of the petitioners that they have married on 16.12.2016 against the wishes of their parents- private respondents.

As per Aadhaar Card annexed with the petition (Annexure P2), the date of birth of petitioner No.2 Gurpreet Kaur is 10.6.1999, which means, she has not attained the age of majority/marriage so far. Although, it is alleged that the petitioners had married but no marriage certificate or photograph of marriage etc. have been produced by the petitioners. Since, this petition has been filed for grant of protection to the life and liberty of the petitioners including petitioner No.2- Gurpreet Kaur apprehending danger at the hands of respondents No.4 and 5, who are none else but father and brother of Gurpreet Kaur and she (Gurpreet Kaur) is a

minor, she is ordered to be sent to the Protection Home at Chandigarh.

Notice be issued to the respondents for 10.1.2017.

As far as petitioner No.1 Jagdeep Singh is concerned, respondent No.2, Senior Superintendent of Police, Patiala is directed to provide necessary protection to Jagdeep Singh (petitioner No.1) in case he appears and moves an application before him seeking protection for his life and liberty.

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 Gurpreet Kaur (petitioner No.2) to the Protection Home. She be produced in the Court on the date fixed.”

{4}. Today, petitioner No.2 has been brought in the Court by Lady Constable Jaspal Kaur from the Protection Home.

{5}. Learned counsel for the petitioners very fairly stated that petitioner No.1 has already been provided necessary police security by respondent No.3-SHO.

{6}. Learned State counsel on instructions from Head Constable Som Nath stated that the police has already recorded statements of respondents No.4 and 5 i.e. father and brother of the petitioner No.2 on 07.01.2017 in which they have categorically submitted that they have no objection to the marriage between the petitioners and they will not harass the couple.

{7}. In view of aforesaid, the threat perception at the hands of respondents No.4 and 5 prima-facie stands negated, but still respondents No.2 and 3 can be obligated to foresee any such further threat perception at the hands of private respondents for which they will keep on monitoring the security cover provided to petitioner No.1 and now henceforth qua petitioner No.2 as well.

{8}. The only question to be considered is whether the petitioner No.2 who is still a minor can be allowed to go along with her husband.

{9}. Learned counsel for the petitioner relies upon **Smt.Lila Gupta vs. Laxmi Narain and others, AIR 1978 Supreme Court, 1351.** The Court observed, while referring to Sections 5, 11 and 12 of Hindu Marriage Act, 1955 (for short 'the Act') 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.”

{10}. Again in **Neetu Singh vs. State 1999 (3) RCR (Crl.) 26**, the Division Bench of Delhi High Court held that minor cannot be kept in Nari Niketan against her wishes and the marriage of minor girl is neither void nor voidable.

{11}. The Court relied upon **Mrs.Kalyani Chaudhary vs. State of U.P. and others, 1978 Cr.L.J.1003** and **Seema Devi @ Simaran Kaur vs. State of H.P. , 1998 (2) Crimes 168**, in the following manner:-

"It is not in dispute that the parties are Hindus and they are governed by the Hindu Marriage Act, 1955. Section 5 (iii) provides that a marriage may be solemnised between any two

Hindus if the conditions set out in subsection (iii) is that the bridegroom has completed the age of 21 years and the bride the age of 18 years at the time of the marriage. For the purpose of this petition, I will assume that the complaint of the 2nd respondent that the petitioner herein was aged only 15 years is true. Even so, the marriage has not been invalidated by the provisions of the Hindu Marriage Act. Section 11 of the Act deals with void marriages. That Section relates only to marriages held in contravention of clauses (i), (iv) and (v) of Section 5. That Section does not refer to clause (iii) of Section 5. Section 12 refers to voidable marriage. That Section deals only with marriages in contravention of the conditions specified in clause (ii) of Section 5. That Section does not also deal with clause (iii) of Section 5. Thus, the marriage in contravention of clause (iii) of Section 5 is neither void nor voidable under the provisions of the Hindu Marriage Act. The only other relevant provision is Section 18 of the Act, which provides for punishment for contravention of the conditions specified in Section 5(iii) also. The punishment will

be imprisonment, which may extend to 15 days or with fine which may extent to Rs. 1,000/ or both. Thus, the only provision which will come into play in the event of contravention of Section 5(iii) is Section 18 of the Hindu Marriage Act and nowhere does the Act declare the marriage to be illegal or in valid or void."

{12}. In Seema 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.

{13}. In Lalla @ Ranjeet vs. State of U.P. and others 2013 (96) ALR 568, the Division Bench of Allahabad High Court held that if the corpus has given birth to a child in Nari Niketan 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 does not agree then she may be allowed to live according to her free will.

{14}. In LPA No.2146 of 2016 titled as Bhim Sain vs. State of Punjab and others, decided on 27.10.2016, the aforesaid proposition has been reiterated and the minor was liberated from the impact of the impugned order and was set free in order to enable her to go in her own way.

{15}. In view of aforesaid, this petition is disposed of.

Petitioner No.2 who has come to the Court with the officials of Protection Home is ordered to be set free. She has shown her desire to accompany her husband today itself from the Court premises. For all abundant cautions, respondents No.2 and 3 should have close visual over the welfare of the couple for a reasonable time as they deem fit and proper in the facts and circumstances of the case.

10.01.2017

Jyoti Y.

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No