

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRWP No. 846 of 2017
Date of Decision: 10.08.2017

Baldev Singh

....Petitioner

VERSUS

State of Punjab and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Rajesh Goyal, Advocate
for Mr. Rajiv Kumar Saini, Advocate
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

Mr. Vishavjeet Singh, Advocate
for respondents no. 5 and 6.

SURINDER GUPTA, J.(Oral)

Petitioner-Baldev Singh has filed this petition seeking a writ of habeas corpus for direction to respondents to release Manpreet Kaur, his daughter, who has been illegally and forcibly detained by them.

From the petition, it appears that plea of illegal detention of daughter of petitioner is against respondents no. 5 and 6 and not against respondents no. 1 to 4. As per petitioner, his daughter is minor and has solemnized marriage with respondent no. 5-Resham Singh on 27.04.2017. Thereafter, Manpreet Kaur and respondent no. 5 filed CRM-M-15914-2017, which was disposed of with direction to Senior Superintendent of Police, Moga to look into their representation dated 28.04.2017 and take appropriate action. Respondent no. 5 is residing in the neighbourhood of petitioner but the daughter of petitioner has not been heard of and her whereabouts are also not known. She has been illegally detained by

respondents no. 5 and 6. The petitioner has made repeated visits to them to release his minor daughter but they are not releasing her. It has been prayed that Manpreet Kaur being minor, even if, is not willing to go with her parents, the Court may order to keep her in Child Care Home set up under the provisions of Juvenile Justice (Care and Protection of Children) Act.

Notice of petition was issued to respondents and the Senior Superintendent of Police, Moga was also directed to look into the grievance of petitioner and to arrange his meeting with his daughter in Women Cell Police Station, if so desired by the petitioner and his daughter and submit his report.

Learned State counsel has submitted that the police on verification has found that Manpreet Kaur married respondent no. 5-Resham Singh and is presently living with him. A case bearing FIR No. 37 dated 12.03.2017 was registered against respondent no. 5. The petitioner was allowed to meet Manpreet Kaur during the proceedings in petition CRM-M-13448-2017 on 01.06.2017, where she refused to accompany and live with petitioner. In these circumstances, it will neither be feasible nor in the interest of justice to direct Manpreet Kaur to live with petitioner as she may have danger to her life and liberty or may be subjected to physical and mental harassment because of her decision to marry respondent no. 5-Resham Singh against wishes of petitioner and his family members.

Learned counsel for the petitioner submits that Manpreet Kaur is still minor and even if she had married respondent no. 5-Resham Singh, the custody of minor, till she attains the age of majority, be either handed over to petitioner or she may be directed to be kept in Child Care Home or

Narayanan Kutty, 2004 (3) R.C.R.(Civil)349, he has argued that the petitioner as per provisions of Section 12(3) of Guardian and Wards Act is entitled to custody of Manpreet Kaur till she attains the age of majority. He has also relied on the observations in case of **T.Sivakumar Vs. The Inspector of Police, Thiruvallur Town Police Station and others, 2012(7) R.C.R.(Civil) 2052**, wherein it has been observed that an adult male cannot acquire the legal status of the natural guardian of the female child under Section 6 (c) of Hindu Minority and Guardianship Act and a minor cannot walk away to her whims and fancies from the lawful guardianship of her parents. Reliance has also been placed on the observations by Co-ordinate Bench of this Court in case of **Amrinder Kaur and another Vs. State of Punjab and others 2010(1) R.C.R. (Civil) 191**.

Learned State counsel as well as counsel for private respondents have vehemently refuted the contentions of learned counsel for the petitioner. They have argued that though the marriage by a minor girl is against the provisions of Hindu Marriage Act and Prohibition of Child Marriage Act, 2006 but it cannot be declared as void or invalid only on this score. Manpreet Kaur has left her house of her own, as such, the provisions of Section 363 IPC are also not attracted in this case. The law has been well settled that even minor cannot be kept in *Nari Niketan* against her wishes. Reliance has been placed on observations in cases **Ridhwana and another Vs. U.T. Administration and others 2008(4) R.C.R. (Criminal) 242; Neelam Rani and another Vs. State of Haryana and others 2011(1) R.C.R. (Civil) 636; Seema Devi alias Simaran Kaur Vs. State of H.P. and anr. 1998 (1) R.C.R. (Criminal) 697; Neetu Singh Vs. State 1999(3) R.C.R. (Criminal) 26; Manish Singh Vs. State Govt. of NCT & Ors, 2006**

(1) R.C.R. (Civil) 414; Smt. Lila Gupta Vs. Laxmi Narain and others 1978 AIR (SC) 1351; S. Varadarajan Vs. State of Madras 1965 AIR (SC) 942; Shamsher Vs. U.T. Chandigarh and another 2011(5) R.C.R. (Criminal) 677 and Jasinder Kaur Vs. State of Punjab and others CRM-M-2121-2015 decided on 23.03.2015.

Whether the marriage conducted in contravention of provisions of Hindu Marriage Act, can be declared void was a point for determination before the Apex Court in case of **Smt. Lila Gupta Vs. Laxmi Narain and others (supra)** and the Hon'ble Apex Court on appraisal of law on the point observed in para 19 and 20 as follows:-

“19. 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.

20. 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.”

In case of **S. Varadarajan Vs. State of Madras (supra)**, Hon'ble Apex Court has held that if a minor girl leave the house of her parents of her own with some boy and marry him, the part played by the

person marrying the minor girl falls short of inducement to the minor to slip out of the keeping of her lawful guardian.

A Coordinate Bench of this Court in case of ***Neelam Rani and another Vs. State of Haryana and others (supra)***, dealt with similar point where the girl was alleged to be minor and she sought protection from her parents as she had married against their wishes. A Co-ordinate Bench of this Court observed in para 9 of the judgment as follows:-

“9. In this regard the Supreme Court in the case of ***S. Varadarajan v. State of Madras, AIR 1965 SC 942*** held that taking or enticing a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. However, when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is a senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar’s Office where they get an agreement to marry registered, and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stretch of imagination be said to have “taken” her out of the keeping of her lawful guardianship, that is the father in the said case. The Himachal Pradesh High Court in ***Kamal Singh v. The state of H.P., 1985 (1) Crimes 151*** considered the case where there was some intimacy between prosecutrix and the appellant in the said case and the prosecutrix was

willing and active agent in her enticement and she accompanied the accused of her own accord while her parents were asleep. It was held that even though the prosecutrix was below 18 years would not be material. The accused therein was acquitted. The Delhi High Court in ***Bhagwan Singh and Others v. State and another, 2007 (1) RCR (Criminal) 347*** considered a case where a Muslim girl aged 17 years 3 months converted to Hinduism and married the accused. The FIR under Sections 363 and 366 IPC was registered by the father of the girl. It was observed that marriage of such a spouse is neither void nor illegal on account of his or her being less than 18 years but over 15 years of age. In ***Rukshana and another v. Govt. of NCT of Delhi and Others, 2007 (3) RCR (Crl.) 542 (Delhi)*** a minor girl aged 16 years 6 months had a liking for the accused. Both ran away and got married. They had a son out of the marriage. The FIR for the offences under Sections 363, 364-A and 365 IPC was quashed in the interest of accused, prosecutrix and the child. The Delhi High Court in ***Sh. Jitender Kumar Sharma v. State and another, 2010 (4) RCR (Crl.) 20 (Delhi) (D.B.)*** where a boy aged 18 years and a girl aged 16 years who had a liking for each other fled away from their homes and married according to Hindu rites, held that the marriage was not void though it was in contravention of Section 5(iii) of the Hindu Marriage Act 1955. It was held that a minor girl marrying a minor boy, her natural guardian is no longer her father but husband and her custody was given to the husband. A minor husband, it was observed, can be a guardian of his minor wife. A minor, it was held, is competent to act as a guardian of his own wife or child. Where custody of minor is concerned the prime and often the sole consideration or guiding principle is the

welfare of the minor. The girl in the said case was given freedom to go with her husband and reside with him.”

In view of settled proposition of law as discussed above, I find no reason to give any direction that custody of Manpreet Kaur be handed over to the petitioner. It is a settled proposition of law that the marriage in violation of provisions of Section 5 of Hindu Marriage Act and Section 10 of Prohibition of Child Marriage Act, 2006 would not be a nullity, rather such violation is punishable under the relevant provisions of the Act.

Resham Singh, being the husband of Manpreet Kaur, is her guardian and the custody of Manpreet Kaur cannot be given to *Nari Niketan* against her wishes. It was also so observed in case of ***Seema Devi alias Simaran Kaur Vs. State of H.P. and anr. (supra)***; ***Neetu Singh Vs. State (supra)***; ***Shamsher Vs. U.T. Chandigarh and another (supra)*** and ***Jasinder Kaur Vs. State of Punjab and others(supra)*** and minor girl was allowed to go to her matrimonial home. So far as the right of the petitioner to seek custody of the minor child as per provisions of Hindu Minority and Guardianship Act is concerned, he will be at liberty to approach the civil Court in this regard and no such direction can be issued in this petition as welfare of minor, is of paramount consideration for a Guardian Judge to look into before passing any order with regard to custody of a child.

In view of the above facts, I find no merits in this petition, as such, the same is dismissed.

August 10, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***