

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-11594-2018 (O&M)

Date of Decision: 03.05.2018

Akshita and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sarvesh Kumar Gupta, Advocate, for the petitioners.
Mr. Ravi Partap, AAG, Haryana.

Amol Rattan Singh, J. (Oral)

In the order dated 19.03.2018, it was recorded as per the contention of the learned counsel for the petitioners, that they had married each other on 16.03.2018 of their own free will, with the date of birth of petitioner no.2, Manjeet, shown to be 27.08.1993, as per his driving license; but with no proof of age of petitioner no.1 given in the petition, other than her own affidavit (Annexure P-1). Though no date of birth of petitioner no.1 is seen to be specifically recorded in that order, however, a perusal of the said affidavit shows that petitioner no.1 has sworn therein that she is 18 years and 5 months old, her date of birth given being 08.10.1999 and that she had studied up till Class 10 but did not possess any certificate to that effect.

In response to notice issued, an affidavit of the Superintendent of Police (Headquarters), Jhajjar, has been filed in Court by the learned State counsel.

He has also produced in Court today the Secondary School Examination Certificate of petitioner no.1, Akshita daughter of Manoj and Meena, showing her date of birth to be 08.10.2002 therein. He has further, produced in Court her birth certificate, shown to be issued by the Registrar (Birth and Death), Nazafgarh Zone, South Delhi Municipal Corporation, NCT, Delhi, showing her date of birth to be 08.10.2003.

Thus, as per the birth certificate, on the date of the alleged marriage of the petitioners, i.e. 16.03.2018, petitioner no.1 was 14 years and about 5 months old, whereas as per her Secondary School Examination Certificate, she would be 15 years and about 5 months old.

It is also to be noticed that the registration of her birth, as per the birth certificate, is shown to be 11.02.2013, with the Secondary School Examination Certificate issued on 03.06.2017.

Either which way, i.e. whether she is 14 years and 5 months old or 15 years and 5 months old, petitioner no.1 is most definitely, as per the aforesaid documents at least, well below the legally marriageable age of 18 years.

Though in an other such petition, seeking protection of the lives and liberty of the petitioners therein, who had also married each other of their own free will against the wishes of their parents and family, this Court had disposed of the petition allowing the female petitioner therein to continue living with the person she contended she had married, with her also being only a few months above the age of 15 years, that was on a

specific query put to that petitioner as to whether she wished to live with her parents or with the person she had married, to which she had replied that she would like to continue living with the person that she had married, and in fact her father was forcing her to get married to another person.

Consequently, that petition had been disposed of, allowing the petitioners to live with each other, after referring to Section 6 of the Hindu Minority and Guardianship Act, 1956, by which the custody of even a minor married female, is stipulated to be that of the husband.

As opposed to that, firstly, it is not established in the present case, whether petitioner no.1 is above or below the age of 15 years of age, in view of the different years of birth given in the two certificates produced in Court today as original certificates by the learned State counsel (they having been given to him by Sub-Inspector Joginder Singh, posted at Police Station Sadar, Bahadurgarh, District Jhajjar).

Further, the petitioners are not present in Court today, for this Court to put any kind of query to petitioner no.1.

Still further, petitioner no.1 though a minor of course, has obviously sworn a completely false affidavit, Annexure P-1. Petitioner no.2 on the other hand, is shown to be 24 years of age as per the copy of his driving license, Annexure P-2, with his date of birth being 27.08.1993, thereby making him about 24 years and 7 months old as on the date of the alleged marriage.

In the aforesaid circumstances, where it is not certain whether

petitioner no.1 is above or below the age of 15 years, with her birth certificate definitely showing her to be below even the age of 15 years, this petition is dismissed, with a direction that though obviously the lives of the petitioners would continue to be protected, however, as regards liberty, that would be protected only within the four corners of law, by respondents no.2 and 3, and any proceedings initiated by a competent person in respect of petitioner no.1 having been enticed away etc., by petitioner no.2, would continue to their logical conclusion.

An FIR however be registered in respect of the commission of an offence punishable under Section 9 of the Prohibition of Child Marriage Act, 2006, the said offence being a cognizable offence, at least prima facie it having been shown before this Court that petitioner no.1 is well below the legally marriageable age for females, i.e. 18 years. However, all proceedings in the FIR still proceed wholly as per law, with the matter to be investigated and taken to its logical conclusion, with all parties including the accused naturally free to lead evidence as they are entitled to.

Any other FIR registered by a competent person in respect of any offence alleged to have been committed under the provisions of the Indian Penal Code or any other law, would also be taken to its logical conclusion, as already stated earlier herein above.

03.05.2018
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(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes