

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-19333-2018 (O&M)

Date of Decision:- 12.9.2018

Sharik and another

... Petitioners

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL**

Present:- Mr. Ravi Malik, Advocate for the petitioners.

Mr. Navdeep Singh, AAG, Haryana.

Mr. R.S.Mamli, Advocate, for respondent No.4.

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**GURVINDER SINGH GILL, J. (Oral)**

Petitioners Sharik stated to be aged 29 years and Sofia @ Laxmi stated to be aged 16 years have approached this Court seeking issuance of directions to respondents No.1 to 3 to protect their life and liberty as they apprehend threat to the same at the hands of respondents No.4 and 5.

It is the case of the petitioners that while petitioner No.1 is Muslim by religion, petitioner No.2 who was a Hindu had converted her religion from Hindu to Muslim, out of her own sweet will and wish being in love with petitioner No.1 and that the petitioners had performed marriage

(Nikah) on 4.5.2018 at a Masjid in Manimajra according to Muslim rites and customs.

The petitioners have averred that the relatives of petitioner No.2 are annoyed with the petitioners for having married against their wishes and have been extending threats to the petitioners to eliminate them in case they do not dissolve the marriage, forcing the petitioners to approach this Court.

Vide order dated 7.5.2018, this Court while issuing notice of motion to the respondents had directed Superintendent of Police, Yamuna Nagar (respondent No.2) to protect the life and liberty of the petitioners.

A short reply by way of affidavit of Sh. Rajinder Kumar, HPS, Deputy Superintendent of Police, Jagadhri (Yamuna Nagar) on behalf of respondents No.1 to 3 has been filed wherein it has been deposed that the petitioners were not found at the given address and could not be contacted. It has further been stated therein that whenever they approach the local police, they shall be extended necessary protection. It has further been deposed that statements of respondent No.4 namely Ramesh Kumar (father of petitioner No.2) and of respondent No.5 namely Mukesh Jindal have been recorded and that Ramesh Kumar had stated that he has not extended any threat to the petitioners and has no concern with them and that even respondent No.5 had stated that he had never threatened the petitioners. Although translated versions of statements of respondents No.4 and 5 are annexed with the aforesaid affidavit but neither the said translated versions are signed nor the original or photocopies of the vernacular statements have been annexed.

Respondent No.4 Ramesh Kumar (father of petitioner No.2) has filed a separate reply wherein a stand has been taken that petitioner No.2 is a minor and that in fact her marriage had been solemnized with one Avi Sharma son of Devender Kumar, resident of Kurukshetra on 9.4.2018 and that in fact petitioner No.2 had been kidnapped by petitioner No.1 and FIR had been lodged against petitioner No.1 vide FIR No.7 dated 4.1.2018, under Sections 323, 452, 506, 34 IPC read with Sections 4 and 8 of POCSO Act. It has thus been stated that since petitioner No.2 had not taken any divorce from Avi Sharma, therefore, the second marriage is a void marriage and that she still remains a Hindu.

The learned counsel for respondent No.4 while opposing the petition has pressed into service of judgment of Hon'ble the Supreme Court reported as 2000(6) SCC 224 Lily Thomas Vs. Union of India that feigned conversion to a particular religion with a motive to safely violate a law does not confer any right under the changed religion as well.

I have heard the learned counsel for the petitioners and also the learned State counsel and counsel for respondent No.4.

In the present case, petitioner No.2 Sofia @ Laxmi is stated to be aged 17 years. Under Hindu Law marriage with a girl aged 17 years i.e. a girl less than 18 years would be voidable and not void. In any case the petitioners in the present case assert that petitioner No.2 has converted to Muslim religion. Hon'ble the Supreme Court in the cited case i.e. Lily Thomas's case (supra) was seized of a matter where an earlier judgment of Hon'ble the Supreme Court rendered in Sarla Mudgal(Smt.) President, Kalyani & Ors. v. Union of India & Ors., 1995(3) SCC 635 was sought to be

reviewed. In Sarla Mudgal's case the scope and extent of Section 494 IPC was interpreted as follows:

“..... that the second marriage of a Hindu husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 Indian Penal Code and the apostate-husband would be guilty of the offence under Section 494 Indian Penal Code.”

Hon'ble the Apex Court after discussing the case law at length found no ground to allow the review application and consequently the view taken in Sarla Mudgal's case was not altered.

In the cited case, by way of conversion of religion, and contracting a second marriage, the husband was virtually defeating the right of his first wife to prosecute him for bigamy since the first wife would have been the victim, consequent upon solemnization of second marriage of her husband. However, in the present case there is no such victim whose right is being defeated. In any case, this Court at this stage would not like to comment upon the validity of the marriage or regarding any liability of any of the parties.

Since the petitioners claim to have married and apprehend threats to their life and liberty at the hands of respondents No.4 and 5, it is certainly the duty of the State to protect their life and liberty. A person apprehending infringement of his right of “Protection of life and personal liberty” whether his/her marriage is void or voidable, can approach this Court seeking enforcement of the said constitutional right and the factum of his marriage being void or voidable cannot frustrate the said right provided

by Article 21 of Constitution of India. Though, of course it goes without saying that State would be at liberty to proceed against such person in case such person has committed any offence punishable under law.

Although respondent No.4 himself claims that his daughter is a minor but at the same time it is also being asserted that his daughter is already married. In any case no proof of any such marriage is forthcoming to substantiate the aforesaid claim of respondent No.4. In this context a reference needs to be made to a judgment of this Court reported as 2011(1) RCR (Civil) 636 Neelam Rani and another Vs. State of Haryana and others wherein also in a case of 'run-away marriage' where the girl was aged 17 years and had married against the wishes of her parents, it was held that such a marriage is voidable and not *per se* void and consequently directions were issued to the police that in case the petitioners approach the police setting out their grievances, the same shall be considered and looked into by the police in accordance with law.

In view of the aforesaid discussion the petition is disposed of with a direction to Superintendent of Police, Yamuna Nagar (respondent No.2) to make another effort to contact the petitioners and in case it is found that there is any threat to their life and liberty, then to take adequate steps to ensure that no harm is caused to them. It is also ordered that in case, at any stage, the petitioners move a representation to Superintendent of Police, Yamuna Nagar (respondent No.2) seeking protection, apprehending threat to their life and liberty, the same shall be duly considered by Superintendent of Police and needful shall be done thereupon.

The aforesaid directions in any case is not to be taken any expression of opinion regarding validity of the marriage of the petitioners.

Further it is also clarified that the aforesaid directions shall not confer any immunity on the petitioners from their liability for any penal action, in case any of their act attracts criminal liability. The police would not be debarred from taking any action in accordance with law and such action may even include arrest of petitioner No.1 against whom the FIR is stated to have been lodged already, if the circumstances and the facts so demand.

September 12, 2018  
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( Gurvinder Singh Gill)  
Judge

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| Whether speaking /reasoned | Yes / No |
| Whether Reportable         | Yes / No |