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Crl. Misc. No.M-3451 of 2018 (O&M)

Date of Decision: 08.02.2018

Shiwani Chauhan and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Nonish Kumar, Advocate, for the petitioners.

Mr. Surender Singh, AAG, Haryana.

Mr. Ravinder Bangar, Advocate, for respondents no.4 to 6.

Ms. Aashima Mor, APP, U.T., Chandigarh.

Amol Rattan Singh, J. (Oral)

Pursuant to the order dated 25.01.2018, directing the

Superintendent of Police, Yamunanagar, to determine from the village of petitioner no.1, i.e. Haibatpur, Tehsil Bilaspur, as to her exact age, Mr.

Surender Singh, learned Assistant Advocate General, Haryana, has produced

in Court today a certificate issued by the Principal of M.P. Arya Sr. Sec.

School, Haibatpur (in Hindi), stating to the effect that Shiwani Chauhan

daughter of Jai Kumar, passed the 10+2 Examination from that school in

March 2017 and that as per the school record her date of birth is 30.11.2000.

Along with the aforesaid certificate are two photocopies of the Secondary

School Examination and Senior Secondary Examination of petitioner no.1,

also attested under the seal and signature of the aforesaid principal, showing

her date of birth to be 30.11.2000, thereby making her 17 years and about 2

months old at the time of marriage, i.e. 23.01.2018.

However, as per learned counsel for the petitioners, the age of petitioner no.1 was wrongly entered by her parents in the school register at the time of her admission in school and actually even as per the register of the village 'Chowkidar', her date of birth is 30.11.1998, which is what she has stated on affidavit also, a copy of the affidavit being Annexure P-1.

Obviously if that date of birth is found to be correct, she would be 19 years and 2 months of age on 23.01.2018.

That being so, in any case, it not being a void marriage, she having entered matrimony of her own accord and only voidable at her instance upon her attaining majority (if her date of birth is found to be 30.11.2000), this petition is disposed of with a direction that the lives and liberty of the petitioners would continue to be duly protected under the provisions of law, but if upon enquiry in appropriate proceedings instituted under the Prohibition of Child Marriage Act, 2006, she is found to be underage, naturally all lawful consequences would follow. Equally of course, if she is found to be over the age of 18, no such proceedings would lie.

The contention of the learned counsel for respondents no.4 to 7 that petitioner no.1 be sent to the protection home till her age is determined, is rejected for the reason that even today as per the aforesaid certificate, she is 10 months short of adulthood and as already observed it is not a void marriage. It is a voidable marriage and as per Section 6(c) of the Hindu Minority and the Guardianship Act, 1956, the custody of a married minor

Hindu girl would normally lie with her husband.

It needs to be stated here that petitioner no.1 having appeared before this Court and the questions having been put up to her by this Court, she does not appear to be of such an immature mind to prima facie at least hold that she needs to be protected from the person she is stated to have married, i.e. petitioner no.2, and in any case, the contention being that her date of birth as entered in the register of the village 'chowkidar' is also shown to be 30.11.1998, without making any further comment on the actual age of petitioner no.1, which would be gone into in appropriate proceedings, this Court is of the opinion that in this particular case at least, she cannot be forced to stay with the parents, i.e. respondents no.4 and 5.

Therefore, the petitioners are free to go wherever they want to, but proceedings under the provisions of the Act of 2006 would be initiated by a competent person in view of the fact that as per her school leaving certificate she is found to be less than 18 years of age and offences under the Prohibition of Child Marriage Act are cognizable offences as per Section 15 of the said Act.

However, all observations of this Court, as regards the actual age of petitioner no.1, to repeat, would be gone into in appropriate proceedings, with evidence led as per law, as to her actual age.

A copy of this order be given to the learned counsel for the

State of Haryana, as also Ms. Aashima Mor, APP, U.T., Chandigarh, under
signatures of the Court Secretary.

08.02.2018
vcgarg

(Amol Rattan Singh)
Judge

Whether speaking/reasoned: Yes
Whether reportable: Yes