

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

**CRM-M No.36486 of 2017
Decided on: 22.02.2018**

Vipinjit Kaur and another

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. L.S. Mann, Advocate
for the petitioners.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

Mr. Pardeep Sehrawat, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing of FIR No.115 dated 19.08.2015 (Annexure P3) registered under Section 10/11 of the Prohibition of Child Marriage Restraint Act, 2006 (in short 'the Act') at Police Station Division No.2, District Ludhiana.

Brief facts of the case are that petitioner No.1 namely Vipinjit Kaur, daughter of Raj Sikander and Amarjit Kaur and petitioner No.2 namely Satinderpal Singh son of Jaspal Singh and Peeta allegedly performed marriage on 25.04.2015 against the consent and wishes of their parents in Prachin Shiv Mandir, Panchkula. Since, it was a case of run-away couple, both the petitioners filed CRM-M No.13711 of 2015 and on 29.04.2015, the following order was passed by this Court:-

“Petitioner no. 2 is stated to be less than 21 years of

age.

Notice of motion, for 28.08.2015.

On the asking of Court, Mr. Gurveer Sidhu, AAG, Punjab accepts notice on behalf of respondents no. 1 to 3.

Let requisite number of copies of paper-book be supplied to learned State counsel during course of the day.

In the meanwhile and without commenting on the validity of marriage or correctness of ages of the petitioners, respondent no. 2-Commissioner of Police, Ludhiana is directed to look into the allegations contained in representation dated 25.04.2015 (Annexure P-4) and if warranted, take appropriate steps in accordance with law.

It is made clear that if a complaint for criminal offence or an FIR is pending, this order shall not cause any hindrance in those proceedings.

Both the petitioners are directed to remain present in Court on the next date of hearing.

Respondent no. 2 would also file response as to what proceedings have been initiated for violation of provisions of the Prohibition of Child Marriage Act, 2006.”

In pursuance to the order dated 29.04.2015, the FIR No.115 dated 19.08.2015 was registered at Police Station Division No.2, District Ludhiana under Section 10 of the Act as the petitioner No.2 – Satinderpal Singh was below 21 years of age. This FIR was registered against the petitioners as well as the parents of both the petitioners named above with the allegations that they have performed marriage in violation of the provisions of the Act.

The parents of both the petitioners have filed **CRM-M No.23541 of 2016** titled as **“Jaspal Singh and others vs State of Punjab and another”**, praying for quashing of the FIR and after issuing

notice of motion, the said FIR was quashed by this Court qua the parents of the petitioners vide order dated 08.08.2017. The order dated 08.08.2017 reads as follows:-

“Petitioners-Jaspal Singh, Tajinder Kaur, Raj Sikander and Amarjit Kaur have filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing FIR No.115 dated 19.8.2015, (Annexure P3) under Sections 10/11 of Prohibition of Child Marriage Restraint Act, 2006 ('Act" for short), registered at Police Station Division No.2 , District Ludhiana.

Brief facts of the case are that the son of petitioner No. 1 and 2, namely, Satinderpal Singh and daughter of petitioners No. 3 and 4, namely, Vipinjot Kaur filed CRM-M-13711 of 2015 in this Court praying for issuance of direction to safeguard their life and liberty as they had performed marriage on 25.4.2015 without the consent of the petitioners. In this petition (At Annexure P1), it was alleged that the aforesaid Vipinjot Kaur's date of birth is 18.12.1996 and Satinderpal Singh's date of birth is 19.2.1995. While issuing notice of motion on 29.4.2015, the following order was passed by this Court:-

“Petitioner no. 2 is stated to be less than 21 years of age.

Notice of motion, for 28.08.2015.

On the asking of Court, Mr. Gurveer Sidhu, AAG, Punjab accepts notice on behalf of respondents no. 1 to 3.

Let requisite number of copies of paper-book be supplied to learned State counsel during course of the day.

In the meanwhile and without commenting on the validity of marriage of correctness of ages of the petitioners, respondent no. 2-Commissioner of

Police, Ludhiana is directed to look into the allegations contained in representation dated 25.04.2015 (Annexure P-4) and if warranted, take appropriate steps in accordance with law.

It is made clear that if a complaint for criminal offence or an FIR is pending, this order shall not cause any hindrance in those proceedings.

Both the petitioners are directed to remain present in Court on the next date of hearing.

Respondent no. 2 would also file response as to what proceedings have been initiated for violation of provisions of the Prohibition of Child Marriage Act, 2006.”

Thereafter, the petition was disposed of, on the basis of the statement made by the State Counsel that both the petitioners have stated before the Police that there is no threat perception to them, vide order dated 28.8.2015 which reads as under:-

“This petition under Section 482 Cr.P.C. has been filed by the petitioners seeking direction to respondents No. 2 and 3 to protect their life and liberty at the hands of respondents No. 4 to 10 as they entered into matrimony against their wishes. Learned counsel for the petitioners as well as State Counsel on instructions from ASI Kapil Kumar submits that statements of both the petitioners were recorded wherein they stated that there is no threat perception to them.

In view of the above, no further indulgence of this Court is required and the instant petition is disposed of as such.”

Later on, the present FIR was registered against the petitioners being parents of aforesaid Vipinjit Kaur and Satinderpal Singh for the violation of Sections 10/11 of the

Act with the allegations that the age of Satinderpal Singh was less than 21 years. The present petition has been filed by their parents for quashing of the aforesaid FIR. In pursuance to the notice of motion issued on 29.7.2016, reply has been filed.

Learned counsel for the petitioners has submitted that, in fact, the petitioners have no role in the alleged marriage of Vipinjit Kaur and Satinderpal Singh as, admittedly, both have performed marriage against the wishes of their parents and have filed a petition for protection as a runaway couple in this Court on 27.4.2015 (Annexure P1) and the same was disposed of vide order dated 28.8.2015. It is further submitted that from perusal of the petition (Annexure P1) filed by the children of the petitioners, it is apparent that they were apprehending threat to their life and liberty at the hands of the petitioners as they had performed love marriage of their own consent and the same was not acceptable to the petitioners and, thus, at no point of time, petitioners were instrumental in performing their marriage and, therefore, they are not liable for any punishment for solemnising a child marriage. It is also submitted that the petitioners were not even present at the time of marriage which, though, later on, was accepted by the parents considering the larger interest of the children as well as both the families. Learned counsel has also submitted that a perusal of the FIR shows that the same has been registered in the light of the directions given by this Court to inform about initiation of any proceedings of violation of the provisions of the Act and, therefore, the petitioners have been named in the present FIR and, in fact, neither the Priest, who performed the marriage nor the persons, who were witnesses of the marriage, were arrayed as accused in the FIR.

Learned counsel for the petitioners further submitted that, in fact, it is not a case where the petitioners were directly or indirectly involved in the solemnisation of the marriage or were instrumental in the promotion of the solemnisation of the child marriage. The girl-Vipinjit Kaur was, admittedly, above the 18 years of age and the boy-Satinderpal Singh was nearing the age of 21 years and both of them were capable of thinking their well being and had performed marriage against the wishes of the petitioners.

Learned counsel for the State, in response, has submitted that the FIR has been registered only in pursuance to the order dated 29.4.2015 and the final report under Section 173 Cr.P.C. will be submitted after the completion of investigation and prayed for dismissal of the petition.

After hearing the learned counsel for the parties, I am of the opinion that in the present petition FIR is not legally sustainable against the petitioners.

Section 10 and 11 of the Act read as under:-

“10. Punishment for solemnising a child marriage.-Whoever performs, conducts or directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

11. Punishment for promoting or permitting solemnisation of child marriages.-

(1)Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any

member of an organization or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend upto one lakh rupees: Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised."

A perusal of the above provisions show that the whoever permits or promote solemnisation of child marriages is liable to be punished under the Act. There is no allegation that the petitioners either solemnised the marriage of their children or promoted the solemnisation of the marriage of their children. Rather a perusal of the petition (Anneuxre P1) filed by their children clearly show that the petitioners as their respective parents were protesting against their marriage and, therefore, both the children filed the aforesaid petition CRM-M-13711-2015 in this Court where they have stated that they are facing life threat at the hands of the present petitioners.

Since on the face of it, it is apparent that the petitioners were never associated in the performance of the marriage of their children, no offence under Section 10/11 of the Act is made out.

Accordingly, this petition is allowed. FIR No.115 dated 19.8.2015, under Sections 10/11 of the Act,

registered at Police Station Division No.2 District Ludhiana is hereby quashed.”

Counsel for the petitioners has submitted that both the petitioners have performed marriage of their own sweet will and despite the fact that a period of 03 years has already lapsed, they are living happily and there is no violation of Section 10/11 of the Act. Counsel for the petitioners has further submitted that as per provisions of Section 9 of the Act, punishment is provided for a male adult marrying a child and as per Section 10 of the Act, it is provided that whoever performs, conduct, direct or abets any child marriage shall be punishable with rigorous imprisonment and further Section 11 of the Act provides punishment for promoting or permitting solemnization of child marriages. For ready reference, Sections 2, 3, 9, 10, 11 and 12 of the Act is reproduced as under:-

“Section 2 - Definition

In this Act, unless the context otherwise requires, -

(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) "child marriage" means a marriage to which either of the contracting parties is a child;

xxxxxx xxxxxx xxxxxxxx

(f) "minor" means a person who, under the provisions of the Majority Act, 1875 (9 of 1875) is to be deemed ot to have attained his majority.

xxxxxx xxxxxx xxxxxxxx

3. Child marriages to be voidable at the option of contracting party being a child. -

(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall

be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

xxxxx xxxxxx xxxxxx xxxxxx

“9. Punishment for male adult marrying a child.—

Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with

both.

10. Punishment for solemnising a child marriage.

—Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

11. Punishment for promoting or permitting solemnisation of child marriages.—(1) *Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees: Provided that no woman shall be punishable with imprisonment. (2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.*

12. Marriage of a minor child to be void in certain circumstances. - Where a child, being a minor -

- (a) is taken or enticed out of the keeping of the lawful guardian; or"*
- (b) by force compelled, or by any deceitful means induced to go from any place; or*
- (c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is*

married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

Counsel for the petitioners has submitted that the bare perusal of Section 10 of the Act show that a punishment is provided for a person who performs, conducts, directs or abets any child marriage and it nowhere specifies that in an eventuality, a person who is defined as a child as per Section 2(a) of the Act is liable for punishment and there is no provision that in case of a child marriage, any penal action can be taken against such a child whose marriage is performed. It is further submitted that there is no provision either under Sections 10 and 11 of the Act that a woman can be punished with imprisonment and, therefore, petitioner No.1 (being wife of petitioner No.2) and above age of 18 years on date of marriage, being a lady cannot be prosecuted under Sections 10 and 11 of the Act. Counsel for the petitioners has further submitted that before passing the order dated 29.04.2015 passed by this Court in CRM-M No.13711 of 2015, it is observed that *“petitioner No.2 is stated to be less than 21 years of age.”*

Counsel for the petitioners has further submitted that while issuing direction to respondent No.2 regarding the proceedings taken for violation of provision of the Act, no finding was recorded by this Court that petitioner No.2 is less than 21 years of age and it was only observed that *“petitioner No.2 is stated to be less than 21 years of age.”* It is further submitted by counsel for the petitioners that the FIR has been registered in a haste in order to comply with the directions dated 29.04.2015 without even verifying the age of petitioner No.2 and

till date, no such clarification has been made.

Counsel for the petitioners has also submitted that since the FIR qua the parents has already been quashed vide order dated 08.08.2017, the FIR against the petitioners be also quashed.

Reply by way of affidavit of the Assistant Commissioner of Police (Central), Ludhiana has already been filed in the Court and in the reply, it is only stated that in compliance with the order dated 29.04.2015, the FIR has been registered. A perusal of the reply show that no enquiry was conducted by the Commissioner of Police (Central), Ludhiana to ascertain the age of petitioner No.2 before registration of the FIR and the FIR was registered on the premise that petitioner No.2 aged 20 years 03 months and 16 days as on the date of marriage. It has been held by the Hon'ble Full Bench of Delhi High Court in ***“Court on its own Motion (Lajja Devi) vs State”, 2012(4) RCR (Criminal) 821*** that the Prohibition of Child Marriage Act, 2006 do not render a marriage void but only voidable. The operative part of the judgment where question No.1 was framed and decided after comparative study of various provision of the Prohibition of Child Marriage Act, 2006, is reproduced below:-

“Question 1:

Whether a marriage contracted by a boy with a female of less than 18 years and a female of less than 21 year could be said to be valid marriage and the custody of the said girl be given to the husband (if he is not in custody)?

16 to 38. xxxx xxxx xxxx xxxx”

39. As held above, PCM Act, 2006 does not render such a marriage as void but only declares it as voidable,

though it leads to an anomalous situation where on the one hand child marriage is treated as offence which is punishable under law and on the other hand, it still treats this marriage as valid, i.e., voidable till it is declared as void. We would also hasten to add that there is no challenge to the validity of the provisions and therefore, declaration by the legislature of such a marriage as voidable even when it is treated as violation of human rights and also punishable as criminal offence as proper or not, cannot be gone into in these proceedings. The remedy lies with the legislature which should take adequate steps by not only incorporating changes under the PCM Act, 2006 but also corresponding amendments in various other laws noted above. In this behalf, we would like to point out that the Law Commission has made certain recommendations to improve the laws related to child marriage.

40. *Be as it may, having regard to the legal/statutory position that stands as of now leaves us to answer first part of question No. 1 by concluding that the marriage contracted with a female of less than 18 years or a male of less than 21 years would not be a void marriage but voidable one, which would become valid if no steps are taken by such "child" within the meaning of Section 2(a) of the PCM Act, 2002 under Section 3 of the said Act seeking declaration of this marriage as void.*

Thus, it is well settled principal of law that in case of a marriage of a child (girl below 18 years and boy below 21 years) it will not be a void marriage but voidable one, if no steps are taken by such child as per Section 2(a) of the Prohibition of Child Marriage Act, 2006 seeking declaration of such marriage as void.

In view of the same, admittedly a period of 03 years has

lapsed since date of marriage of the petitioners i.e. 25.04.2015 and it is stated at bar that both of them are living a happily married life, the marriage between them was never declared a void marriage and hence, no offence is made out.

In view of the above facts and circumstances and considering the fact that no offence is made out against petitioner No.1 who is a lady and even, if petitioner No.2 is taken to be a child, there is no provision in law for punishment of a child, in case of a child marriage and also in view of the fact that FIR qua parents of both the petitioners has already been quashed vide order dated 08.08.2017 passed in CRM-M No.23541 of 2016 and in view of the judgment passed by the Hon'ble Full Bench of Delhi High Court in **Court on its own Motion (Lajja Devi)'s case (supra)**, the present petition is allowed and FIR No.115 dated 19.08.2015 (Annexure P3) registered under Section 10/11 of the Prohibition of the Child Marriage Act, 2006 at Police Station Division No.2, District Ludhiana is quashed qua the petitioners.

22.02.2018

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(ARVIND SINGH SANGWAN)

JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No