

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

CRM-M-4076-2018

Date of Decision:01.02.2018

Manjeet Kaur and anotherPetitioners

Vs.

State of Haryana and othersRespondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Sumit Gupta, Advocate,
for the petitioners.

Mr. Surender Singh, A.A.G., Haryana.

Mr.Sandeep Kumar, Advocate,
for respondents no.4 to 6.

AMOL RATTAN SINGH, J. (Oral)

Though in the petition filed by the petitioners who are stated to have got married to each on 25.01.2018, it has been stated in paragraph 10 that it is the first marriage of both the petitioners, learned counsel appearing for respondents no.4 to 6, submits that as a matter of fact petitioner no.2 is married earlier, though his wife is not before this Court as a respondent in this petition.

Upon query to petitioner no.2, he has admitted in Court that he was married earlier but that petitioner no.1 is fully aware of that and infact he had informed his counsel of the same, (which learned counsel denies). Infact he submits that he has obtained a divorce from her wife.

No comment whatsoever would be made by this Court in that regard, as no decree of divorce has been produced.

Learned counsel for respondents no.4 to 6 still insists that in the aforesaid circumstances petitioner no.1 should be sent to a Nari Niketan.

Upon query to him as to how old she is, he admits that she is an adult. As per the copy of her Aadhar card, annexed with the petition, her year of birth is seen to be 1990, thereby making her about 27-28 years of age, though in the memo of parties she is shown to be 23 years of age.

In any case, her being well above 18 years of age is not in doubt even as per respondents no.4 to 6. (Respondent no.4 is seen to be her father, respondent no.5 stated to be her brother and respondent no.6 stated to be her uncle from the memo of parties).

Upon query to petitioner no.1 by this Court on whether she would like to go to her parents' home or with the petitioner no.2, at the first instance in the morning she had stated that she wishes to go with him; however, upon this Court directing that she should meet her father at least once, in the circumstances that petitioner no.2 was married earlier, she had agreed to do so and upon the matter being taken up in the post session, she had stated that she would like to go to her parental home.

This Court not being convinced as to whether she was saying so under pressure or of her own free will, directed all persons present in Court from the side of respondents no.4 to 6 to leave the Court, as also petitioner no.2 to do so. They therefore left her in the Court alone, though in the company of the police officials accompanying her, she having been brought from the Protection Home, Sector -19, Chandigarh, where she was lodged upon directions of this Court on 30.01.2018.

The matter having been again taken up at 4.00 p.m., she has now again reiterated her desire to go with petitioner no.2. This is so upon repeated

queries to her.

That being so, the contention of learned counsel for respondents no.4 to 6, that she be sent to a Nari Niketan have to be rejected, there being no provision of law disallowing her to go with the person she chooses to go with, as a fully grown adult.

As regards petitioner no.2 having been married under, Section 494 of the IPC reads as follows:

“494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction,

nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.”

The offence itself is non-cognizable and bailable, and compoundable with the permission of the Court before which any prosecution for such offence is pending.

The offence being non-cognizable, naturally this Court would not direct any prosecution at the outset against petitioner no.2 on that count, he in any case stating that he has obtained a divorce. However, proceedings instituted by a competent person, on the allegation that petitioner no.2 has entered into matrimony for the second time without the first marriage being dissolved as per law, would continue, as per law.

The petitioners are therefore directed to be taken under escort to the Protection Home at Sector 19, Chandigarh, from where with adequate number of police officials (including a lady police official) from Police Station, Sector-3, Chandigarh, they would be taken to Kaithal tomorrow. At the first instance they will be taken to the Police Station under the jurisdiction of which the area in which petitioner no.2 resides falls, with the Superintendent of Police, Kaithal, and the SHO of that police station ensuring that the life and liberty of the petitioners is thereafter duly protected at the hands of respondents no.4 to 6 (or any other person), within the four corners of law.

Disposed of.

February 01, 2018

dharamvir

**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO