

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.47291 of 2017
Date of Decision: 12.02.2018

Sapna Sharma and anotherPetitioners
Vs

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Munish Kumar Garg, Advocate,
for the petitioners.

Mr. Munish Dev Sharma, A.A.G. Haryana.

Mr. V.D. Sharma, Advocate
for respondents No.4 to 9.

RAJ MOHAN SINGH, J.(Oral)

On 08.02.2018, following order was passed:-

“By this petition, the petitioners are seeking protection of their lives and liberty at the hands of respondents no. 4 to 9, who are stated to be the parents and other relatives of petitioner no. 1.

Vide an order passed on 12.12.2017, the Superintendent of Police, Panipat, i.e. respondent no. 2, had been directed to send the petitioners to the Protection Home at Panipat, where they are stated to be still lodged.

Learned counsel for the aforesaid respondents has produced in Court today, a copy of a petition filed by respondent no. 4, i.e. the father of petitioner no. 1 in the

Court of the Additional Civil Judge (Senior Division), Samalkha, seeking to declare the marriage between petitioners no. 1 and 2 to be null and void, invoking therein the provisions of the Prohibition of Child Marriage Act, 2006.

He further submits that as a matter of fact, petitioner no. 2 being admittedly below the legally marriageable age for boys, i.e. he being less than 20 years of age, with the legally marriageable age being 21 years, both under the provisions of Hindu Marriage Act, 1955, as also the Prohibition of Child Marriage Act, 2006, the marriage itself is void and therefore, the petitioners cannot be permitted to reside together.

*He relies upon a judgment of a co-ordinate Bench of this Court in **Amninder Kaur and another vs. State of Punjab and others 2010 (1) R.C.R (Criminal) 261**, wherein after discussing that the girl in that case was 16 years and 02 months old at the time of her marriage, she being therefore a child, in terms of Section 3 of the Majority Act, 1875, it was held that the marriage was void.*

Firstly, of course, it is to be noticed here that both the petitioners are admittedly above 18 years of age, with learned counsel for respondents no. 4 and 5 also not denying that he has taken instructions in that regard, with petitioner no. 1 having been born on 09.02.1999.

*Thus, the situation in **Amninder Kaur's** case (supra) is different to the present case, with both the petitioners most definitely being above the age of majority, i.e. above 18 years of age, in terms of the Majority Act, 1875.*

Having said that, what cannot be denied is that as per Section 12 of the Act of 2006, a marriage of a minor child (a “child” as defined in Section 2 (a) of that Act as being a male who has not completed 21 years of age and a female who has not completed 18 years of age), would be void only if the child has been taken or enticed out of the keeping of the lawful guardian; or by force compelled, or by any deceitful means induced to go from any place' or sold for the purpose of marriage and made to go through a 'form of marriage', or if the minor was earlier married, he/she was sold or trafficked or used for immoral purposes. Otherwise, the marriage would be voidable at the instance of petitioner no. 2, when he turns 21 years of age.

In such circumstances, the Court would first consider it appropriate to query petitioner no. 2 with regard to any possible enticement.

Consequently, both the petitioners be produced in Court, under escort provided by the Senior Superintendent of Police, Panipat, on the next date of hearing.

Adjourned to 12.02.2018.

To be shown in the urgent cause list.

A copy of this order be given to learned counsel for the State under the signatures of the Bench Secretary of this Court.”

Today, petitioners have been produced by ASI Bijender from Protection Home, Panipat.

Learned counsel for the petitioners submitted that

petition under Section 12 of Prohibition of Child Marriage Act, 2006 has already been filed by the parents of petitioner No.1 in which defendants/respondents therein have already received notices from the Court.

At this stage, this Court is only concerned about the safety of the petitioners. This Court is not supposed to comment upon the validity of marriage of the petitioners and respective ages of the petitioners at this stage.

In **Smt. Lila Gupta Vs. Laxmi Narain and others,** **AIR 1978 Supreme Court, 1351**, the Hon'ble Apex Court proceeded to held in the following manner:-

“A comprehensive review of the relevant provisions of the Act unmistakably manifests the legislative thrust that every marriage solemnised in contravention or one of other condition prescribed for valid marriage is not void. Section 5 prescribes six conditions for valid marriage. Section 11 tenders marriage solemnised in contravention of conditions (i), (iv) and (v) of Section 5 only, void. Two incontrovertible propositions emerge from a combined reading of Sections 5 and 11 and other provisions of the Act, that the Act specifies conditions for valid marriage and a marriage contracted in breach of some but not all of them renders the marriage void. The statute thus prescribes conditions for valid marriage and also does not leave it to inference that each one of such conditions is mandatory and a contravention, violation

or breach of any one of them would be treated as a breach of a prerequisite for a valid marriage rendering it void. The law while prescribing conditions for valid marriage simultaneously prescribes that breach of some of the conditions but not all would render the marriage void. Simultaneously, the Act is conspicuously silent on the effect on a marriage solemnised in contravention or breach of the time bound prohibition enacted in Section 15. A further aspect that stares into the face is that while a marriage solemnised in contravention of clauses (iii), (iv), (v) and (vi) of Section 5 is made penal, a marriage in contravention of the prohibition prescribed by the proviso does not attract any penalty. The Act is suggestively silent on the question as to what is the effect on the marriage contracted by two persons one or both of whom were incapacitated from contracting marriage at the time when it was contracted in view of the fact that a period of one year had not elapsed since the dissolution of their earlier marriage by a decree of divorce granted by the Court of first instance. Such a marriage is not expressly declared void nor made punishable though marriages in breach of conditions Nos.(i), (iv) and (v) are expressly declared void and marriages in breach of conditions Nos. (iii), (iv), (v) and (vi) of Section 5 are specifically made punishable by Section 18. These express provisions would show that Parliament was aware about treating any specific marriage void and only specific marriages punishable. This express provision prima facie would go a long way to negative any suggestion of marriage being void though not

covered by Section 11 such as in breach of proviso to Section 15 as being void by necessary implication. The net effect of it is that at any rate Parliament did not think fit to treat such marriage void or that it is so opposed to public policy as to make it punishable.

Similarly, a reference to Child Marriage Restraint Act would also show that the Child Marriage Restraint Act was enacted to carry forward the reformist movement of prohibiting child marriages and while it made marriage in contravention of the provisions of the Child Marriage Restraint Act punishable, simultaneously it did not render the marriage void. It would thus appear that voidness of marriage unless statutorily provided for is not to be readily inferred.

Thus, examining the matter from all possible angles and keeping in view the fact that the scheme of the Act provides for treating certain marriages void and simultaneously some marriages which are made punishable yet not void and no consequences having been provided for in respect of the marriage in contravention of the proviso to Section 15, it cannot be said that such marriage would be void.”

In **Neetu Singh Vs. State, 1999 (3) RCR (Criminal)**

26, it was held by the Division Bench of Delhi High Court that the minor cannot be kept in preventive institution against her wishes. The said case was related to minority of the girl. It was also observed that the marriage of a minor is neither void nor voidable in the absence of any such declaration given by the

competent Court.

In **Seema Devi @ Simaran Kaur Vs. State of HP, 1998 (2) Crimes 168 ; Rukshana and another vs. Govt. of NCT of Delhi and others, 2007(3) R.C.R. (Criminal) 542; Lalla @ Ranjeet vs. State of U.P. and others, 2013(96) ALR 568; Santosh vs. State of Rajasthan, 2004(2) Crl.L.R. 1394; Shamsheer vs. U.T., Chandigarh and another, 2011(5) R.C.R. (Criminal) 677; Balwinder Singh @ Binder vs. State of Punjab and others, 2008(3) R.C.R. (Criminal) 1** and in **Court of Its Own Motion (Lajja Devi) vs. State, 2012 (4) R.C.R. (Civil) 821**, it was observed that the relief cannot be denied merely because of girl is found to be minor. If the corpus has given birth to a child in Nari Niketan, then keeping the corpus in Nari Niketan is not proper and she will be released from Nari Niketan. Minor girl should be allowed to go as per her own wishes and her wishes cannot be curtailed.

In **Santosh's case (supra)**, the Rajasthan High Court also quashed the detention of the girl on the ground that the marriage of a minor in contravention of Section 5 of the Hindu Marriage Act, is neither void nor voidable unless it is so declared by the competent Court. At this stage, only welfare of the minor has to be seen without being prejudiced by any of the violation.

The apprehension of the complainant on the basis of minority of one of the party is inconsequential and is squarely met by the ratio laid down by this Court in **Court On Its Own Motion (Lajja Devi)'s case (supra)**.

At this stage, this Court is not in a position to comment upon the validity of marriage or otherwise between the petitioners, but in the given situation, Superintendent of Police, Panipat can be asked to look into the grievance of the petitioners and pass appropriate order in accordance with law. If the lives and liberties of the petitioners are found to be at stake, necessary protection can be granted to them, if they are not involved in any other case. Both the parties can approach Superintendent of Police, Panipat without being prejudiced to their civil rights in pending litigation.

A copy of this order be given to learned State Counsel under the signatures of the Bench Secretary of this Court as per rules.

(RAJ MOHAN SINGH)
JUDGE

12.02.2018
prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No