

246

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

CRWP No.911 of 2017

Date of Decision: 19.01.2018

RESHMA

.....Petitioner

Vs

STATE OF HARYANA & ORS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Nihul Pratap Singh Advocate
for the petitioner.

Mr. Satish Saini, D.A.G., Haryana.

Alleged detainee Jyoti in person with
Mr. Sunil Dhanda, Advocate for
Mr. Rajesh Lambal, Advocate.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner sought issuance of roving writ in the nature of habeas corpus to locate the detainee namely Jyoti aged about 16 years.

[2]. On 09.11.2017, following order was passed by the Co-ordinate Bench of this Court:-

“Detenue-Jyoti is present in person.

Learned counsel for the detainee-Jyoti submits that she is minor as per her date of birth recorded in Aadhaar Card and Senior Secondary School Certificate,

Faridabad, which have been given to police and verified.

Learned State counsel submits that the investigating officer has verified the school certificate, which has been found to be correct and as per date of birth recorded in the certificate she is major.

Learned counsel for the petitioner submits that detenue-Jyoti is minor and her date of birth is 10.10.2001 as per which she is only 16 years of age.

On enquiry, Ms. Jyoti submits that she wants to live with her husband and does not want to accompany her mother i.e. petitioner.

Learned counsel for the detenue has also produced on file copy of her marriage certificate issued by Gurudwara Darshan Parkash, Bathinda, which is taken on record.

Learned counsel for the petitioner at this stage requests for facilitating a meeting of her mother i.e. petitioner and father with their daughter.

File of this case be sent to Mediation and Conciliation Centre of this Court, where the meeting of petitioner and her husband with Ms.Jyoti will be arranged before a mediator.

Parties are directed to appear before the mediator at 02.00 p.m. today itself.

List on 12.12.2017.”

[3]. Thereafter both the parties appeared before the Mediation and Conciliation Centre of this Court which could not fructify.

[4]. Today, the alleged detenue Jyoti has come present in

the Court and stated that she is major being born on 04.06.1997.

[5]. Learned counsel for the parties are at variance in respect of date of birth of the detainee Jyoti.

[6]. In **Smt. Lila Gupta vs. Laxmi Narain and others, AIR 1978 Supreme Court 1351**, the following observations were made by the Hon'ble Apex Court:-

““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.”

[7]. In **Neetu Singh vs. State, 1999(3) R.C.R. (Criminal) 26**, the Hon'ble Division Bench of Delhi High Court held that the minor cannot be kept in Nari Niketan against her wishes and the marriage of the minor girl is neither void nor voidable.

[8]. In **Seema Devi @ Simaran Kaur vs. State of H.P., 1998(2) Crimes 168**, it was held that the minor girl should be allowed to go as per her wishes. Her wishes cannot be curtailed.

[9]. In **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; Shamsher 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 may be released from Nari Niketan. Firstly, the preference should be made to her for living with her natural guardian. If she does not agree, then she may be allowed to live according to her free will.

[10]. 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. Only the welfare of the minor has to be seen at this stage and the same view was reiterated in Shamsher's case (supra).

[11]. The apprehension shown by learned counsel for the petitioner that the consent of minor is inconsequential was squarely met by the decision of this Court in Court On Its Own Motion (Lajja Devi)'s case (supra).

[12]. Taking into entirety of facts and circumstances of the case, I deem it appropriate to allow the alleged detainee Jyoti to go as per her will without making any such provision for sending

her to Nari Niketan against her wishes.

[13]. Petition stands disposed of accordingly. Both the parties would be at liberty to avail their legal remedies in accordance with law.

January 19, 2018

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No