

248

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

CRWP-200 of 2018

Date of Decision:12.03.2018.

SUBHASH CHAND

...Petitioner

Versus

STATE OF HARYANA AND ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Lajpat Sharma , Advocate
for the petitioner.

Mr. M.D. Sharma, AAG, Haryana.

Mr. P.K. Rohilla, Advocate
for respondent Nos. 9 and 10.

RAJ MOHAN SINGH, J. (ORAL)

Ritu Devi and Ajay Kumar filed CRM-M-4833 of 2018 under Section 482 Cr. P.C. for directing Superintendent of Police, Karnal and S.H.O Police Station of Butana to give police protection to them as they had contracted marriage on 01.02.2018 against wishes of their family members.

This Court vide order dated 05.02.2018 disposed of the case by observing in the following manner:-

“The aforesaid order is being passed at this stage without meaning anything on the merits of the case. Respondent No.2 would pass necessary

order without being influenced by any observation made by the Court in terms of pleadings at this stage. This order shall not debar the official respondents from proceeding against any of the party in accordance with law in case they are involved in some other case. It would be appreciated if the representation filed by the petitioners is decided within a period of one month from today keeping in view the threat perception shown by the petitioners.

Petition stands disposed of.”

Police recorded FIR No. 29 dated 06.02.2018 under Section 363, 366-A IPC against Ajay Kumar son of Subhash Chand (petitioner). Ajay Kumar was arrested on 13.02.2018.

On 13.02.2018 sfather of Ajay Kumar filed this petition in the nature of habeas corpus.

Notice of motion was issued on 14.02.2018 and respondents No. 7 and 8 were directed to produce Ajay Kumar and Ritu Devi, in this Court on 20.02.2018. Needful was not done on the adjourned date and the case was adjourned to 26.02.2018. On 26.02.2018 IO Dharambir did not attend the Court. One ASI Gurbachan Singh was present. Owing to the situation of the case, S.H.O. Sandeep Singh and IO of the case Dharambir were directed to be present in the Court for today.

Today, medical certificate of ASI Dharambir has been produced showing that he was advised rest for two days by doctor vide endorsement dated 25.02.2018. A photocopy of the medical certificate issued by Medical Officer/Incharge PHC Matlauda (Panipat) has been retained on record. From the medical certificate,ss I am satisfied with respect to absence of ASI Dharambir on 26.02.2018. The explanation of S.H.O Sandeep Singh has also been accepted to this effect.

Ritu Devi has been produced by lady Constable Savita, from Nariniketan.

Ritu Devi has two Adhar Cards. In one of the Aadhar Card her age is shown to be 02.03.1998, whereas second Aadhar Card shows her date of birth as 02.03.2000.

The FIR has been registered on the basis of the date of birth to be 02.03.2000. In Secondary School certificate, date of birth of Ritu, is recorded as 02.03.1998.

In view of the conflicting record, it can not be conclusively held at this stage that Ritu Devi is major or otherwise.

Learned counsel for the parties are at variance in respect of date of birth of the detainee Ritu Devi.

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.”

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.

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.

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.

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).

However, according to her own wish Ritu Devi wants to go along with the petitioner who is her father-in-law.

In view of above, Ritu Devi is allowed to go according to her own wish.

Petition stands disposed of accordingly. Ajay Kumar would be at liberty to avail his legal remedy in accordance with law.

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

(RAJ MOHAN SINGH)
JUDGE

March 12, 2018

Jyoti-IV

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No