

103.

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

CRM-M-20311-2017 (O&M)

Date of decision: 12.09.2019.

JAI GOPAL AND ANR

... Petitioners

versus

STATE OF HARYANA AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Vipin Mahajan, Advocate, for the petitioners.

Ms. Priyanka Sadar, AAG, Haryana, for respondent No.1.

None for respondent No.2.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of F.I.R. No.91 dated 01.04.2017 registered under Sections 363, 366-A, 120-B of IPC and Sections 9, 10, and 11 of Child Marriage Prohibition Act, 2006 at Police Station Parao, District Ambala (Annexure P-1).

The aforesaid FIR was registered at the behest of respondent No.2-Ram Nath. As per the FIR, the complainant had two children and out of them, one is Ankita, born on 20.01.2000 and is a student of 10+2. On 30.03.2017, his daughter had gone to Ambala Cantt. along with her fiancée Vinod son of Dharambir, resident of Gillor Majra. Vinod parked his motorcycle in front of bus stand and went inside for bathroom. However, when he came back from bathroom, he did not find Ankita present there.

Vinod informed the complainant on telephone about the missing of Ankita.

Apprehending that Ankita has been enticed away by petitioner No.2-Yuvraj Dhiman @ Yogesh, the present FIR was registered against him.

Counsel for the petitioners has argued that petitioner No.2-Yuvraj Dhiman @ Yogesh and Ankita, daughter of respondent No.2-complainant, have solemnized marriage though against the wishes of respondent No.2. Both Ankita and Yuvraj Dhiman @ Yogesh approached this Court by way of **CRM-12506-2017** titled as ***Ankita and another Versus State of Haryana and others*** and this Court, vide order dated 10.04.2017, had directed the Superintendent of Police, Ambala, to look into the matter and to take appropriate action in accordance with law to ensure that no harm is caused to the life and liberty of the parties. The said petition was ultimately disposed of by this Court vide order dated 12.07.2017 with the following observations:-

“I have heard the learned counsels for both the parties and have also carefully gone through the file.

It comes out that the petitioners have married against the wishes of their parents. Admittedly, petitioner No. 1 was 17 years and 2 months at the time of marriage. At the time of passing of the order, her age is approximately about 17 years and 6 months and she is on the threshold of attaining majority. I am of the considered view that even marriage with a minor is voidable at the option of minor and it is not a void or illegal marriage. This Court is not to go into the validity of the marriage to provide protection. The fact that the parents of petitioner No. 1 are contesting the case goes to show that they are not happy with the marriage. Therefore, the apprehension of the petitioners is genuine. Therefore, without going into the validity of the marriage, the petition is disposed of with a direction to Superintendent of Police, Ambala, District Ambala,

to assess the threat perception to the life and liberty of the petitioners and provide necessary protection to their life and liberty as he deems fit in the given circumstances.”

Mr. Mahajan, counsel for the petitioners, has further argued that now petitioner No.2 and Ankita have solemnized marriage and not only Ankita has attained majority, rather the couple has been blessed with a daughter from this wedlock and they are staying together as husband and wife. The FIR registered at the behest of respondent No.2 is liable to be quashed. The date of birth of Ankita is 20.01.2000, whereas petitioner No.2- Yuvraj Dhiman @ Yogesh born on 26.11.1996 and as on date, they have already attained majority. Even the statement of Ankita was recorded under Section 164 Cr.P.C. wherein she had stated that she has solemnized marriage with Yuvraj Dhiman on 10.04.2017 on her own wishes and she intends to stay with him (Yuvraj Dhiman) only. He is keeping her well.

He has referred to judgment passed by this Court in ***Gurmukh Singh Versus State of Punjab and others-2013(1) R.C.R. (Criminal) 514*** and Delhi High Court judgments rendered in ***Rukshana and another Versus Govt. of NCT of Delhi and others-2007(3) R.C.R. (Criminal) 542*** and ***Jitender Kjmar Sharma Versus State and another-2010(4) R.C.R. (Civil) 59*** to contend that when a girl, who is minor at the date of her marriage and an FIR has been registered at the behest of the parents under Sections 363 and 366 of IPC and the girl has made a statement under Section 164 Cr.P.C. that she is happily living with her husband, the chances of his conviction are quite bleak. Therefore, the pendency of FIR would further add sufferings and miseries of the wife-Ankita. Moreover, she willingly went with the

petitioner No.2, solemnized marriage with him and sought protection from this court against her parents.

Learned State counsel, on instructions from ASI Naresh, does not dispute the very fact that petitioner No.2 and Ankita are staying together and they have been blessed with a daughter also.

I have heard counsel for the parties.

Considering the fact that once the parties have solemnized marriage though against the wishes of the parents, but at the same time when the wife has attained majority and blessed with a child, in case, the proceedings are allowed, it will create unnecessarily harassment to the family. The sufferer would not only be the wife of petitioner No.2 rather a new born child also.

Though notice in the case was issued to respondent No.2, but after 07.08.2018 till date, no one had put in appearance his behalf.

Since the parties are staying together as husband and wife, no useful purpose would be served by keeping the proceedings alive in the present FIR. Therefore, relying upon the judgment passed in ***Rukshana and another's case*** (supra), the present petition is allowed and the F.I.R. No.91 dated 01.04.2017 registered under Sections 363, 366-A, 120-B of IPC and Sections 9, 10, and 11 of Child Marriage Prohibition Act, 2006 at Police Station Parao, District Ambala (Annexure P-1) and all subsequent proceedings arising therefrom, are quashed qua the petitioners.

(HARI PAL VERMA)
JUDGE

12.09.2019

sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.