

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

**CRM-M-44259-2016(O&M)
Date of Decision: 25.01.2019**

Ravi Yadav

....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: None for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

ARVIND SINGH SANGWAN, J.

By way of the present petition, the petitioner has sought quashing of FIR No. 376 dated 14.09.2016, under Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006, registered at Police Station Sadar Hansi, District Hisar, Haryana and along with consequential proceedings, being misuse of the process of law.

Brief facts of the prosecution case are the petitioner's date of birth is 10.12.1995, as per the school certificate issued by Principal of Government Senior Secondary School, Dhana Khurd and he has performed marriage with respondent No. 2 (D.O.B. 01.06.1997) at Shiv Mandir Indira Colony, Rohtak on 24.06.2016. On the basis of the said marriage between the petitioner and respondent No. 2 Rajni, both of them filed a protection petition before the Sessions Judge, Rohtak. On 16.07.2016, the following order was passed in the said petition:-

“Balbir, Kuldeep and Rameshwar appeared before the court in pursuant to the notices issued by this court and made their joint statement to the effect that petitioners

contracted marriage with their free will and they have no objection to the marriage solemnized by them and they will not interfere in their married life.

Thereafter, both the petitioners have also made their joint statement to the effect that they have heard the statement of Balbir, Kuldeep and Rameshwar and now they have no danger to their life from anyone and they do not require any further protection and also do not want to proceed with the present petition.

In view of their statements, the present protection petition is hereby dismissed as withdrawn. Further, it is directed that in case of emergency, if the petitioners apprehend danger to their lives, then they may approach to the Superintendent of Police, Rohtak/SHO of the concerned police station, who shall provide police protection to them. File be consigned to the record room after due compliance.

Announced in open Court

Dated: 16.07.2016

(Sant Parkash)
Sessions Judge, Rohtak.”

Thereafter, the impugned FIR was got registered at the instance of nine persons namely Bharat Singh, Rameshwar, Prem Chand, Satyanarayan, Gangadutt, Dharampal, Laxminarayan, Sitaram, Umed Singh all resident of Hansi, District Hisar with the allegations that they are the residents of the Village Dhana Khurd, Tehsil Hansi and accused/petitioner Ravi Kumar is also the resident of the said village, whose date of birth is 10.12.1995 as per the certificate issued by the Principal of the Government Senior Secondary School, Dhana Khurd. It is further stated that accused Ravi had performed marriage with Rajni on 24.06.2016 according to Hindu rites and ceremonies and had also filed a protection petition before the Sessions Judge, Rohtak for seeking protection and had given a false affidavit that he is aged 21 years, whereas on the date of marriage, his age was 20 years 6 months and 14 days, therefore, by performing the marriage with Rajni, whose date of birth is 01.06.1997, he has committed the offence punishable under Section 9 of the Prohibition of Child Marriage Act 2006 and, therefore, an

FIR be registered.

Reply by way of affidavit of Deputy Superintendent of Police, Hansi is on record and in the reply it is stated that no record with regard to the date of birth of petitioner is available in the register of death and birth in the office of Registrar, Death and Birth, Hisar. It is further stated in the reply that on receiving the complaint from the aforesaid persons, impugned FIR was registered and after investigation, the challan was presented before the trial Court.

There is no representation on behalf of the petitioner, however, with the assistance of the learned State counsel, the case was heard.

A perusal of the petition shows that the petitioner has performed marriage on 24.06.2016 with the respondent-Rajni and they have filed protection petition before the Sessions Judge, Rohtak which was dismissed as withdrawn on 16.07.2016 as noticed above. In the petition, it is stated that it was love marriage and since the complainants were enmity towards the petitioners, they got the impugned FIR registered against the petitioner on that account. It is further submitted that from the bare perusal of the FIR, no offence under Section 9 of the Act is made out and the FIR is registered only to harass and humiliate the petitioner because one of the complainants is the father of the respondent No. 2 who is against this marriage, however, respondent No. 2 was in love with him and married him as admittedly she was above 18 years of age on the date of marriage.

It is also stated that there is no definite age proof of the petitioner as the birth certificate of the petitioner is not available on the record and in the absence of the same, the entry of the birth in the school record showing him below the age of 21 years of age is not an authentic

proof of his age. It is also submitted that instant case pertains to the year 2016 and now the petitioner has attained the age of 21 years. Subsequently, there is no complaint against the petitioner.

Learned State counsel, however, opposed the prayer on the ground that the charges have been framed and the case has now been fixed for prosecution evidence and the very fact that the petitioner was below the age of 21 years on the date of marriage, he has committed offence punishable under Sections 9 & 10 of the Prohibition of Child Marriage Act 2006.

After hearing learned State counsel and going through the record of the petition as well as the reply, I find merit in the present case.

Perusal of Section 9 of the Act shows that the punishment is provided for a male adult marrying a child and as per Section 10 of the Act, it is provided that whoever performs, conduct, direct or abets any child marriage shall be punishable with rigorous imprisonment and further Section 11 of the Act provides punishment for promoting or permitting solemnization of child marriages. For ready reference, Sections 2, 3, 9, 10, 11 and 12 of the Act is reproduced as under:-

“Section 2 - Definition

*In this Act, unless the context otherwise requires, - (a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age; (b) "child marriage" means a marriage to which either of the contracting parties is a child; xxxxx xxxxx xxxxxx
(f) "minor" means a person who, under the provisions of the Majority Act, 1875 (9 of 1875) is to be deemed ot to have attained his majority.*

xxxxx xxxxx xxxxxx

3. Child marriages to be voidable at the option of contracting party being a child. -

(1) Every child marriage, whether solemnised before or after the

commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

xxxxxx xxxxxx xxxxxx xxxxxx

“9. Punishment for male adult marrying a child.— *Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.*

10. Punishment for solemnising a child marriage.

—Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons

to believe that the marriage was not a child marriage.

11. Punishment for promoting or permitting

solemnisation of child marriages.—(1) *Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees: Provided that no woman shall be punishable with imprisonment. (2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.*

12. Marriage of a minor child to be void in certain circumstances. - Where a child, being a minor -

(a) is taken or enticed out of the keeping of the lawful guardian; or"

(b) by force compelled, or by any deceitful means induced to go from any place; or

(c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

Counsel for the petitioners has submitted that the bare perusal of Section 10 of the Act show that a punishment is provided for a person who performs, conducts, directs or abets any child marriage and it nowhere specifies that in an eventuality, a person who is defined as a child as per Section 2 (a) of the Act is liable for punishment and there is no provision that in case of a child marriage, any penal action can be taken

against such a child whose marriage is performed. It is further submitted that there is no provision either under Sections 10 and 11 of the Act that a woman can be punished with imprisonment and, therefore, petitioner No.1 (being wife of petitioner No.2) and above age of 18 years on date of marriage, being a lady cannot be prosecuted under Sections 10 and 11 of the Act.”

It is worthwhile to notice that it has been held by the Hon'ble Full Bench of Delhi High Court in **“Court on its own Motion (Lajja Devi) vs State”, 2012(4) RCR (Criminal) 821** that the Prohibition of Child Marriage Act, 2006 does not render a marriage void but it is only voidable. The operative part of the judgment where question No.1 was framed and decided after comparative study of various provision of the Prohibition of Child Marriage Act, 2006, is reproduced below:-

“Question 1:

Whether a marriage contracted by a boy with a female of less than 18 years and a female of less than 21 year could be said to be valid marriage and the custody of the said girl be given to the husband (if he is not in custody)?

16 to 38. xxxxx xxxxx xxxxx xxxxx”

39. *As held above, PCM Act, 2006 does not render such a marriage as void but only declares it as voidable, though it leads to an anomalous situation where on the one hand child marriage is treated as offence which is punishable under law and on the other hand, it still treats this marriage as valid, i.e., voidable till it is declared as void. We would also hasten to add that there is no challenge to the validity of the provisions and therefore, declaration by the legislature of such a marriage as voidable even when it is treated as violation of human rights and also punishable as criminal offence as proper or not, cannot be gone into in these proceedings. The remedy lies with the legislature which should take adequate steps by not only incorporating changes under the PCM Act, 2006 but also*

corresponding amendments in various other laws noted above. In this behalf, we would like to point out that the Law Commission has made certain recommendations to improve the laws related to child marriage.

40. Be as it may, having regard to the legal/statutory position that stands as of now leaves us to answer first part of question No. 1 by concluding that the marriage contracted with a female of less than 18 years or a male of less than 21 years would not be a void marriage but voidable one, which would become valid if no steps are taken by such "child" within the meaning of Section 2(a) of the PCM Act, 2002 under Section 3 of the said Act seeking declaration of this marriage as void.

Thus, it is well settled principal of law that in case of a marriage of a child (girl below 18 years and boy below 21 years), it will not be a void marriage but voidable one, if no steps are taken by such child as per Section 2 (a) of the Prohibition of Child Marriage Act, 2006 seeking declaration of such marriage as void.

In view of the penal provisions under Section 9, 10 & 11 of the Act, it is nowhere specified that a person who is defined as child as per Section 2 of the Act himself is liable to be punished. There is nothing on record to show that at any step has been taken for declaring the marriage of the petitioner with respondent No. 2 as void and therefore, in view of the judgment passed by the Hon'ble Full Bench of Delhi High Court in ***Court on its own Motion (Lajja Devi)'s case (supra)***, the marriage of respondent No. 2 is only voidable.

As per prosecution version, the respondent No. 2 Rajni (D.O.B. 01.06.1997 i.e. 18 years and 23 day) with whom the petitioner performed marriage was not child on 24.06.2016. Therefore, petitioner being child as per Section 2-A did not perform marriage with a child i.e. Rajni who was

major, on the date of marriage.

Even otherwise, it is own case of prosecution that no record of date of birth of petitioner is available in the office of Registrar, Death and Birth, Hisar and the entire case is based on the school certificate issued by the Principal of School on the basis of his admission number. Therefore, no authentic proof of date of birth of petitioner is on record who himself claims to be above 21 years of age on 24.06.2016 i.e. the date of marriage.

Considering the fact that a period of more than two years has lapsed and the petitioner has already attained the age 21 years and in the absence of any specific provision for prosecuting the petitioner, who himself was child as per Section 2-A of the Act, and did not perform marriage with a child, I find that no offence is made against the petitioner, even if he is taken as a child as there is no provision of prosecution and punishment of a child, therefore, the present petition is allowed and the impugned FIR No. 376 dated 14.09.2016, under Sections 09 and 10 of the Prohibition of Child Marriage Act, 2006, registered at Police Station Sadar Hansi District Hisar, Haryana and further proceedings thereof are quashed qua the petitioner herein.

(ARVIND SINGH SANGWAN)
JUDGE

25.01.2019
shabha

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No