

Sr.No.208

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

CRWP No.3076-2020 (O&M)

Date of Decision: 28.05.2020

RAJPREET KAUR & ANR.

...Petitioners

Versus

STATE OF PUNJAB & ORS.

.Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Karanjit Singh Brar, Advocate

for the petitioners.

Mr. Luvinder Sofat, AAG, Punjab

for respondents No.1 to 3.

(Presence marked through video conferencing)

ARUN MONGA, J. (ORAL)

1. Conflict herein is qua enforcement of fundamental rights of the petitioners seeking protection of their “life and liberty” as enshrined under Article 21 of the Constitution of India viz-a-viz violation of Section 5 (iii) of the Hindu Marriage Act, 1955, inasmuch a girl aged 17 years 3 months and boy aged 25 years claim to have married each other on 17.05.2020, purportedly being in love with each other.

2. Given the nature of the order being passed, there is no necessity to seek any return by the official respondents or even to serve the private respondents No.4 to 6.

3. Having heard learned counsel for the petitioners, as also the learned State counsel and without going into the merits of the validity of the marriage, I am of the view that every citizen being entitled to enforcement of fundamental rights as envisaged under Constitution of India, would necessarily entail grant of appropriate protection to the petitioners herein qua their life and liberty as apprehended by them for the reasons stated hereinafter.

4. Facts, as pleaded in the petition, succinctly are that the petitioner No.1, a minor girl born on 21.03.2003 and petitioner No.2, a boy born on 29.08.1995, a major, claiming to be in love, wanted to marry each other. Their love is, however, not approved by the family members of petitioner No.1.

5. Petitioner No.2 is stated to be an agriculturist and earning handsomely enough to bear the matrimonial responsibility and fulfill the day-to-day needs for leading happy married life. But, the private respondents are adamant to not accept the same and hell bent in ruining the life of the petitioners one way or the other. Private respondents have extended threat to eliminate the petitioners.

6. Apprehending danger to their life, petitioners approached respondents No.2 and 3 i.e. Senior Superintendent of Police, Kapurthala and Station House Officer, Police Station Kotwali, respectively. They submitted a representation dated 11.05.2020 (Annexure P-3) seeking to safeguard their

life and liberty, but no action is being taken on the same. It is stated that, in the meanwhile, during pendency of the instant petition, the petitioners have solemnized marriage on 17.05.2020. Marriage certificate has been produced in the course of hearing by learned counsel for the petitioner and a print out thereof has been taken on record.

7. The petitioners state that they are living in constant danger as they have every apprehension that private respondents will catch them and carry out their threats and may go to the extent of even committing their murder. The petitioners are, therefore, running here and there and unable to find any safe place to live in the absence of protection of their life and liberty. Hence the present writ petition seeking appropriate directions to the official respondents to provide protection qua their life and liberty.

8. As already noted, without expressing any opinion on the merits of the validity of the marriage at this stage, I am of the view that what needs to be addressed is the apprehension of the petitioners based on threat to their life and liberty for the reasons/circumstances as narrated in the petition.

9. Whether an appropriate writ/direction or order is warranted to allay the apprehensions of the petitioners for granting protection to them for enforcement of their fundamental rights under Article 21 of the Constitution of India, is the controversy that requires adjudication herein.

10. I am conscious of the fact that neither the girl is major nor of marriageable age. Marriage, therefore, even if assumed to have taken place according to Hindu Rites, is in violation of Section 5 (iii) of the Hindu Marriage Act. Section 5, ibid envisages statutory pre-requisites for the consenting parties to solemnize marriage between them. Sub Section (iii)

thereof stipulates the minimum ages of a bridegroom and a bride. Section 5 reads as under:-

“Conditions for a Hindu marriage. A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

- (i) neither party has a spouse living at the time of the marriage;*
- (ii) [(ii)at the time of the marriage, neither party (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or (b)though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or (c)has been subject to recurrent attacks of insanity [***];]*
- (iii) the bridegroom has completed the age of [twentyone years] and the bride, the age of [eighteen years] at the time of the marriage;*
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;*
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;”*

11. Undoubtedly, one of the essential conditions of Hindu Marriage Act is that the bridegroom must be above 21 years and the bride above 18 years. However, at the same time, Section 11 of the Hindu Marriage Act which declares certain marriages, which are in contravention of Section 5 (supra), to be void. But, it precludes a marriage solemnized in contravention of Sub Section (iii) of Section 5, *ibid* from the purview of being regarded as void or invalid.

12. My above sentiments are guided by a Division Bench judgment rendered by Delhi High Court in case titled as Jitender Kumar Sharma Vs. State and Another reported as 2001 (7) AD (Delhi) 785. The relevant thereof is extracted here in below:-

“It is true that one of the conditions of a hindu marriage is that the bride should have completed 18 years age and the bridegroom, 21 years. But, does this mean that a marriage where this twin condition as to ages is not satisfied is, ipso facto, invalid or void? An examination of Section 11 of the HMA would seem to suggest otherwise.

x-x-x-x-x-x

A marriage in contravention of clause (iii) of section 5, as we have seen above, does not fall in the category of void marriages specified in section 11 of the HMA nor does it fall in the category of voidable marriages specified in section 12. Consequently, by the process of elimination, it would be a valid marriage. Of course, the marriage may be dissolved through a decree of divorce, but, that would have to be on the grounds specified in section 13 of the HMA. Interestingly, section 13 (2) (iv) enables a 'wife' to petition for dissolution of her marriage on the ground:- (iv)that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years. What does this show? It shows that even a marriage of a minor girl below the age of fifteen is regarded as valid and can only be dissolved on her petition, provided she repudiates the marriage between the time she is 15 years old and 18 years old.”

13. The issue in hand, though is not validity of marriage of the petitioners, but the deprivation of fundamental right of seeking protection of life and liberty. Fundamental Right under Article 21 of Constitution of India

stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.

14. It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. The mere fact that the petitioners are not of marriageable age would not deprive them of their fundamental right as envisaged in Constitution of India, being citizens of India. In somewhat similar circumstances, while disposing of CRWP No. 3048 of 2020, wherein the age of girl was doubtful, speaking for this court, my learned brother Rajiv Narain Raina, J, vide his order dated 12.05.2020 observed thus :-

“Having heard learned counsel for the petitioners and the State, although there is a dispute regarding the age of the girl, yet the prayer is based on Article 21 of the Constitution of India, and therefore, deserves the immediate attention of the Police Department to ensure that the petitioners are not unduly harassed by anyone including the private respondents. It is not for this Court in a protection petition to engage itself in social mores, norms and human behavior or introduce personal ideas on morality. Even if it is assumed that the girl is minor, it must be remembered that in the Hindu Marriage Act, 1956 marriage of a minor girl is not void but voidable on reaching the marriageable age.”

I am in respectful agreement with the observations as above and need say no more on that aspect of the matter.

15. In view of the discussion above, respondent No.2-Senior Superintendent of Police, Kapurthala is directed to verify the contents of the petition particularly the threat perception of the petitioners and thereafter provide necessary protection qua their life and liberty, if deemed fit.

16. It is clarified that this order shall neither be treated as a stamp of this Court qua marriage of the petitioners nor any reflection on the merits of the contentions raised by them in the present petition.

17. The writ petition is, accordingly, disposed of.

18. Pending applications, if any, also stand disposed of.

(ARUN MONGA)
JUDGE

28.05.2020

Jiten

Whether speaking/reasoned Yes/No

Whether reportable Yes/No