

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

**CRWP No. 5039 of 2020 (O&M)
DATE OF DECISION : 20.07.2020**

Shiwani and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr.G.S.Verma, Advocate,
for the petitioners.

Mr. Rana Harjasdeep Singh, DAG, Punjab.
(Presence marked through video conference)

ARUN MONGA, J. (ORAL)

Conflict raised herein is the enforcement of fundamental rights of the petitioners to seek protection of their “life and liberty” as enshrined under Article 21 of the Constitution of India viz-a-viz a conceded violation of Section 5 (iii) of the Hindu Marriage Act, 1955, inasmuch as a girl aged 20 years and 01 months and boy aged 20 years and 09 months claim to have married each other purportedly being in love with each other.

2. Notice of motion to the official respondents, at this stage only, is being issued. Mr. Rana Harjasdeep Singh, DAG, Punjab, who has joined proceedings, on service of advance copy of petition, accepts notice on behalf of State of Punjab.

3. 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 7.

4. Having heard learned counsel for the petitioners, as also 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.

5. Facts, as pleaded in the petition, succinctly are that the petitioner No.1, a girl born on 16.06.2000 and petitioner No.2, boy born on 23.09.1999, as such he is 20 years 09 months and not of marriageable age, claim to be in love with each other.

6. They decided to get married and approached their parents in this regard but parents of petitioner No.1 were against their marriage. Petitioners got married on 16.07.2020 at Panchkula, Haryana, according to Hindu Rites and Ceremonies. Photographs of their marriage have been appended with the petition.

7. Petitioners state that after their marriage, private respondents have issued threat to them that they will kill both the petitioners by tracing them from wherever they are.

8. In the circumstances, the petitioners approached respondent No.2 (Commissioner of Police, Ludhiana) and submitted a representation dated 16.07.2020 (Annexure P-5) seeking to safeguard their life and liberty, but no action is being taken on the same.

9. 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.

10 Both the petitioners are allegedly a run-away couple and claim to have married each other, despite not being of marriageable age, forced by the circumstances triggered by the parents of the girl.

11. 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.

12. Controversy that needs adjudication now is 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.

13. I am conscious of the fact that boy is 20 years and 09 months and not of marriageable age. Marriage, even if assumed to have taken place according to Hindu Rites is, therefore, 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.

14. A perusal of Section 5, *ibid* leaves no manner of doubt that 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 precludes a marriage solemnized in contravention of Sub Section (iii) of Section 5, *ibid* from the purview of being regarded as void or invalid.

15. I find support to my above sentiments from 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*.

16. Reverting to the present case, in light of the aforesaid background and the judgment rendered by Delhi High Court, it appears from the documents appended herein that the petitioners have not solemnized a valid marriage as per Sub Section (iii) of Section 5 of the Hindu Marriage Act and may be required to satisfy the validity of their marriage before an appropriate Forum in the event of same being put to challenge.

17. The issue in hand, however, is not marriage of the petitioners, but the deprivation of fundamental right of seeking protection of life and liberty. I have no hesitation to hold that Constitutional 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.

18. 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 in the present case would not deprive them of their fundamental right as envisaged in Constitution of India, being citizens of India.

19. In view of the discussion above, respondent No.3 i.e Station House Officer, Focal Point, Ludhiana, Punjab, 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.

20. 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.

21. The criminal writ petition is, accordingly, disposed of.

JULY 20, 2020
vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned :
Whether reportable :

Yes/No
Yes/No