105

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No.5167 of 2020 (O&M)
DATE OF DECISION: 23.07.2020

Suman and another

.....Petitioner

versus

The State of Punjab and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Kartik Gupta, Advocate for the petitioners

..

ALKA SARIN, J.: (Oral)

Heard through video conferencing.

The present criminal writ petition has been filed under Article 226/227 of the Constitution of India for enforcement of fundamental rights of the petitioners seeking protection of their life and liberty as enshrined under Article 21 of the Constitution of India.

In brief, the relevant facts are that petitioner No.1 is 19 years of age and petitioner No.2 is 18 years of age. The petitioners have known each other for the last more than two years and the parents and relatives of petitioner No.1, *i.e.* respondent Nos.4 and 5 in the present petition, did not approve the same. It is further stated that respondent Nos.4 and 5 were adamant to get petitioner No.1 married to someone else. The petitioners solemnized their marriage on 20.07.2020 according to Sikh rites and ceremonies. A copy of the marriage certificate has been annexed to the petition as Annexure P/1. It has further been averred in the petition that the petitioners apprehend danger to their life at the hands of respondent Nos.4 and 5 and other

SUNITA NAGPAL
2020.07.27 12:44
I attest to the accuracy and
authenticity y of this document
Chandigarh

family members and, in this regard, the petitioners have sent a representation (Annexure P/4) dated 20.07.2020 to the Senior Superintendent of Police, Hoshiarpur for providing adequate security. However, no action has been taken.

Notice of motion.

On the asking of the Court, Mr. Pawan Sharda, Sr. DAG, Punjab has joined the session through video conferencing and accepts notice.

Heard learned counsel for the parties.

In the present case, without expressing any opinion on the validity of the marriage of the petitioners, this Court needs to consider as to whether the apprehension of the petitioners needs to be addressed.

This Court has taken note of the fact that petitioner No.2 is not of marriageable age as envisaged in Section 5 (iii) of the Hindu Marriage Act, 1955. A Division Bench of the Delhi High Court in the case of "***Jatinder Kumar Sharma V/s State and another"*** reported as ***2010 SCC Online Delhi 2705,*** dealt with the complex issue regarding the marriage between two people ineligible to be married as envisaged under Section 5 (iii) of the Hindu Marriage Act. In para 15, it was held by the Division Bench as under:-

> *"15. Returning to the facts of the present case, we find that, merely on account of contravention of clause (iii) of section 5 of the HMA, Poonam's marriage with Jitender is neither void under the HMA nor under the Prohibition of Child marriage Act, 2006. It is, however, voidable, as now all child marriages are, at the option of both Poonam and Jitender, both being covered by the word child' at the time of their*

SUNITA NAGPAL
2020.07.27 12:44
I attest to the accuracy and
authenticity y of this document
Chandigarh

> *marriage. But,neither seeks to exercise this option and both want to reinforce and strengthen their marital bond by living together. We also find that stronger punishments for offences under the Prohibition of Child marriage Act, 2006 have been prescribed and that the offences have also been made cognizable and non-bailable but, this does not in any event have any impacton the validity of the child marriage. This is apparent from the fact that while the legislature brought about these changes on the punitive aspects of child marriages it, at the same time brought about conscious changes to the aspects having a bearing on the validity of child marriages. It made a specific provision for void marriages under certain circumstances but did not render all child marriages void. It also introduced the concept of a voidable child marriage. The flip-side of which clearly indicated that all child marriages were not void. For, one cannot make something voidable which is already void or invalid."*

In the present case, though the issue in hand is not with regard to the validity of the marriage, but the fact is that the petitioners are seeking protection of their life and liberty as envisaged under Article 21 of the Constitution of India. Article 21 of the Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of his life and liberty except as per the procedure established by law. In the present case, no doubt petitioner No.2 is not of marriageable age as envisaged under Section 5(iii) of the Hindu Marriage Act, however, this Court cannot shut its eyes to the fact that the apprehension of the petitioners needs to be addressed. Merely because

SUNITA NAGPAL
2020.07.27 12:44
I attest to the accuracy and
authenticity y of this document
Chandigarh

petitioner No.2 is not of marriageable age, he cannot be possibly deprived of his fundamental rights as envisaged in the Constitution of India.

In view of the above discussion and without expressing any opinion with regard to the veracity of the contents of the petition and the submissions made by learned counsel for the petitioners, the present petition is disposed of with a direction to respondent No.2/Senior Superintendent of Police, Hoshiarpur (Punjab) to decide the representation dated 20.07.2020 (Annexure P-4) and take necessary action as per law.

It is, however, made clear that this order shall not, in any manner, be construed as an expression of the opinion on the veracity of the statement(s) made by the petitioners or on the validity of the marriage and shall have no effect on any other civil or criminal proceedings, if any, instituted/pending against them.

(ALKA SARIN)
JUDGE

23.07.2020
parkash

NOTE:
Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

SUNITA NAGPAL
2020.07.27 12:44
I attest to the accuracy and
authenticity y of this document
Chandigarh