

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 23369 of 2020
Date of Decision: 29.10.2020**

Chetram @ Sonu

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Mazlish Khan, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana
assisted by ASI Arvind Kumar.

Ms. Sakshi, Advocate
for respondent No. 5.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

This is a petition under Section 482 Cr.P.C. for quashing of FIR No. 149 dated 30.6.2020 registered under Sections 365, 366-A IPC, Police Station Pinjore, District Panchkula (Annexure P-1) and all the consequential proceedings arising therefrom.

Ms. Sakshi, Advocate has appeared on behalf of respondent No. 5 and filed her power of attorney which is taken on record.

Learned counsel for the petitioner states that engagement of Seeta Devi, respondent No. 4, was performed six months ago with petitioner-Chetram @ Sonu and both solemnized marriage on 10.7.2020. Thereafter, the petitioner along with Seeta Devi approached this Court by way of CRWP No. 4805 of 2020 seeking protection to their life and liberty

which was granted on 05.8.2020. The said petition is yet pending. The

petitioner seeks quashing of FIR No. 149 dated 30.6.2020. Learned counsel also relies on the judgment of the Co-ordinate Bench of this Court in *CRM-M No. 20909 of 2014* titled *Madan Lal and others versus State of Punjab and another* decided on 14.9.2015.

Reply has been filed by the State, which is taken on record. As per reply, the statement of respondent No. 4-Seeta Devi under Section 164 Cr.P.C. was recorded before Sub Divisional Judicial Magistrate on 24.8.2020 (Annexure R-1), wherein she has specifically stated that she had gone with Chet Ram (petitioner) of her own free will, with whom she was engaged one year ago and when her family members had refused for her marriage with the petitioner, they performed marriage on 10.7.2020.

Learned counsel for respondent No. 5 submits that she has the instructions to submit that Chet Ram and Seeta Devi are residing together happily and respondent No. 5-Pardeep, who is the author of the FIR in question and brother of Seeta Devi-respondent No. 4, does not want to pursue the present FIR and has no objection in case the same is quashed.

I have heard the learned counsel for the petitioner and learned State counsel as well as counsel for respondent No. 5.

Seeta Devi-respondent No. 4 is minor. Under the Guardians and Wards Act, 1890, the parents are the legitimate guardians. Thus, the marriage of the petitioner with respondent No. 4 is voidable marriage in terms of Hindu Marriage Act, 1955. But the fact remains that both of them have become life partners. In that eventuality, Section 25 of the Guardians and Wards Act, 1890, stipulates that the welfare of the ward is of paramount importance, which cannot be ignored. Even for the sake of repetition, it will not be out of place to mention here that both of them were earlier engaged

to each other and when the family of Seeta Devi tried to break the engagement, she went to the petitioner-husband voluntarily. Thus, it cannot be said that there is any element of taking away or enticing her.

To the mind of this Court, constitutional rights of protection of life and liberty is granted under Article 21 of the Constitution of India.

In the case titled as '***Jitender Kumar Sharma versus State and another, WP (CRL) 1003/2010***', decided on 11.8.2010 by the Division Bench of Delhi High Court, the couple was minor and had performed marriage against the wishes of the parents of girl Poonam, who was aged 16 years whereas Jitender was 18 years of age. It would be relevant to reproduce relevant paras of the said judgment, which read as under:-

“22. A reading of the 1890 Act and the 1956 Act, together, reveals the guiding principles which ought to be kept in mind when considering the question of custody of a minor hindu. We have seen that the natural guardian of a minor hindu girl whose is married, is her husband. We have also seen that no minor can be the guardian of the person of another minor except his own wife or child. Furthermore, that no guardian of the person of a minor married female can be appointed where her husband is not, in the opinion of the court, unfit to be the guardian of her person. The preferences of a minor who is old enough to make an intelligent preference ought to be considered by the court. Most importantly, the welfare of the minor is to be the paramount consideration. In fact, insofar as the custody of a minor is concerned, the courts have consistently emphasized that the prime and often the sole consideration or guiding principle is the welfare of the minor.

23. In the present case, Poonam is a minor Hindu girl who is married. Her natural guardian is no longer her father but her husband. A husband who is a minor can be the guardian of his minor wife. No other person can be appointed as the

guardian of Poonam, unless we find that Jitender is unfit to act as her guardian for reasons other than his minority. We also have to give due weight and consideration to the preference indicated by Poonam. She has refused to live with her parents and has categorically expressed her desire and wish to live with her husband, Jitender. Coming to Poonam's welfare which is of paramount importance, we are of the view that her welfare would be best served if she were to live with her husband. She would get the love and affection of her husband. She would have the support of her in-laws who, as we have mentioned earlier, welcomed her. She cannot be forced or compelled to continue to reside at Nirmal Chhaya or some other such institution as that would amount to her detention against her will and would be violative of her rights guaranteed under [Article 21](#) of the Constitution. Neetu Singh's case (supra) is a precedent for this. Sending her to live with her parents is not an option as she fears for her life and liberty.”

Accordingly, in **Jitender Kumar Sharma's** case (supra), two FIRs i.e. FIR under Section 363/376 IPC and FIR under Sections 363/506 IPC, were quashed.

As per proposition of law laid down in **State of Haryana and others versus Ch. Bhajan Lal and others, 1992 AIR 604**, powers under Section 482 Cr.P.C. can be exercised in exceptional circumstances.

The FIR in question was got registered on the statement of Pardeep-respondent No. 5, who is the brother of Seeta Devi and her date of birth is stated to be 20.10.2003. Since the petitioner and respondent No. 4-Seeta Devi are residing together and complainant/respondent No. 5-Pardeep does not want to pursue the present FIR, no useful purpose would be served in allowing the criminal proceedings to continue. Seeta Devi has got recorded her statement under Section 164 Cr.P.C. before the Magistrate on

24.8.2020 that she had gone with the petitioner of her own free will, when she was produced before the investigating agency on 24.8.2020 by Saroop Singh and Hem Lata i.e. her father-in-law and mother-in-law, and after recording the statement, she was handed over to her in-laws family. The statement dated 24.8.2020 is placed on record by the State as Annexure R-1. Moreover, Seeta Devi was already engaged to Chet Ram @ Sonu, petitioner and now after marriage she is residing in her matrimonial home.

Accordingly, this petition is allowed. FIR No. 149 dated 30.6.2020, registered under Sections 365, 366-A IPC, Police Station Pinjore, District Panchkula and all the consequential proceedings, arising therefrom, are quashed.

(HARNARESH SINGH GILL)
JUDGE

October 29, 2020
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes