

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP No.6912 of 2020 (O&M)
Decided on: 25.09.2020

Sukhwinder Singh and another

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. J.S. Dadwal, Advocate
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Ms. Pratula Sethi, Advocate
for respondent No.4.

ARVIND SINGH SANGWAN, J. (Oral)

On 08.09.2020, the following order was passed by this
Court:-

“Prayer in this petition, filed under Article 226 of the Constitution of India, is for issuance of directions to officials respondents to protect the life and liberty of the petitioners as petitioner No. 1 has performed marriage with petitioner No. 2 against the wishes of her parents and other family members and the petitioners are apprehending threat to their life and liberty at their instance.

Notice of motion.

On the asking of Court, Mr. Harbir Sandhu, DAG, Punjab, who is also appearing through video conferencing, accepts notice on behalf of the respondents-State.

List again on 21.09.2020.

In the meantime, the petitioners and respondent

Nos. 4 to 6 are directed to appear before the Chief Judicial Magistrate, Ludhiana/Duty Magistrate on 15.09.2020, who will record the statement of the parties and submit a report about the age of petitioner No. 2 Poonam as it is her own declaration in the petition that as per her matriculation certificate, her date of birth is 05.07.2003, according to which, as on date, her age is 17 years, 02 months and 03 days. The SHO, Police Station Sahnewal, District Ludhiana will ensure the presence of petitioners and respondent Nos. 4 to 6 before the CJM/Duty Magistrate on the date fixed.

The Chief Judicial Magistrate, Ludhiana is also directed to record the statement of Pandit Sonu Sharma, Purohit of Tridev Sanatan Dharm Prachar Samiti (Regd.), Booth No. 249, MDC, Sector 4, Panchkula on the date so fixed, who have performed the marriage in question, as to how he has performed the marriage without taking any proof regarding age of petitioner No. 2 to be above 18 years.

The SHO, Police Station MDC, Sector 4, Panchkula is also directed to ensure the presence of Pandit Sonu Sharma before the Chief Judicial Magistrate, Ludhiana on 15.09.2020. The SHO will depute two police officials and Pandit Sonu Sharma will pay an amount of Rs. 3,000/- to the SHO towards the cost transportation.

Mr. Sumit Jain, Addl. A.G., Haryana, who is also appearing through video conferencing, is directed to communicate this order to SHO, Police Station, MDC, Sector 4, Panchkula to ensure the presence Pandit Sonu Sharma before the Chief Judicial Magistrate, Ludhiana on 15.09.2020.

Report of the Chief Judicial Magistrate, Ludhiana be sent to this Court on or before the next date of hearing.”

In compliance thereof, the Chief Judicial Magistrate, Ludhiana, has submitted a report dated 16.09.2020. As per the report, the Chief Judicial Magistrate, Ludhiana has recorded the statement of petitioner No.1 – Sukhwinder Singh, petitioner No.2 – Poonam, respondents No.4 and 5 – Sohan Singh and Chandar Kalan Devi (parents of petitioner No.2) and respondent No.6 – Kulbir Singh Negi (the maternal uncle of petitioner No.2 – Poonam).

The Chief Judicial Magistrate, Ludhiana has also recorded the statement of Pandit Sonu Sharma @ Sonu Kaushik, who performed the marriage of the petitioners. The operative part of the report, on the basis of the statement, of all the concerned, reads as under:-

“Therefore, in view of the reasons detailed supra, undersigned submits the report as under:-

i. That the date of birth of petitioner No.2 Poonam is 05.07.2003 which shows that she was less than 18 years of age at the time of marriage.

ii. That Pandit Sonu Sharma, Purohit of Tridev Sanatan Dharam Prachar Samiti (Regd.), has performed the marriage of petitioner No.2 Poonam with petitioner No.1 Sukhwinder Singh without taking valid documentary proof of her age and merely on the basis of duly sworn affidavits of petitioner No.2 Poonam.”

In view of the statements of respondents No.4 to 6, the date of birth of petitioner No.2 – Poonam is 05.07.2003 and on the date of the alleged marriage dated 02.09.2020, her age was 17 years, 02 months and 10 days.

Counsel appearing for respondents No.4 to 6 has placed on record the photocopy of the civil suit dated 08.07.2020 praying for decree of permanent injunction, filed by Sukhwinder Singh @ Lucky,

against respondents No.4 and 5 – Sohan Singh and Chandar Kalan Devi as well as petitioner No.2 – Poonam, who is arrayed as defendant No.3. In this suit, it is prayed that defendants be restrained from dispossessing the plaintiff from his residence, which is situated next to the house of the defendants.

Para 3 of the plaint, reads as under:-

“3. That the defendants are the neighbourer of the plaintiff. Earlier the defendants were having visiting terms with the plaintiff and his family members. The plaintiff always considered the defendant No.3 as his younger sister and there were no bad intentions in the mind of the plaintiff towards the defendant No.3.”

In Para 7 of the plaint, it is stated that the cause of action has accrued to petitioner No.1, when the defendants obtained his and his father’s signatures on a compromise.

A perusal of the compromise show that petitioner No.1 and his father has settled the dispute for vacating the premises.

Counsel appearing for respondents No.4 to 6 further argued that on one hand, the petitioner No.1, in the civil suit, has declared by way of an affidavit that petitioner No.2 is like a younger sister for him whereas in the present petition, it is claimed that both of them i.e. the petitioner No.1 and petitioner No.2 have performed the marriage on 02.09.2020 by giving the date of birth of petitioner No.2 as 05.07.2002 instead of 05.07.2003.

There is no dispute that this marriage was performed by one Pandit Sonu Sharma @ Sonu Kaushik on 02.09.2020 by issuing a Certificate, without taking any age proof of petitioner No.2 like Birth

Certificate, Matriculation Certificate, Aadhar Card, Voter I.D. Card, etc.

It is worth noticing that as per Section 2(a) & (b) of the Prohibition of Child Marriage Act, 2006, a **"child"** means a person who, if a male, has not completed 21 years of age, and in case of a female, has not completed 18 years of age; and **"child marriage"** means a marriage to which either of the contracting parties is a child.

It is further provided under Section 9 of the Prohibition of Child Marriage Act, 2006 that *whoever, being a male adult above 18 years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to 02 years or with fine which may extend to one lakh rupees or with both.*

Similarly, under Section 10 of the Prohibition of Child Marriage Act, 2006, it is provided that ***whoever "performs", conducts or 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.***

In view of the aforesaid provisions, the petitioner No.1 – Sukhwinder Singh as well as Pandit Sonu Sharma @ Sonu Kaushik, who performed the marriage of petitioner No.2 – Poonam, being a child, are liable for prosecution under the Prohibition of Child Marriage Act, 2006.

It is also worth noticing that large number of Mandir, Masjid, Gurudwara and Girjaghar, are performing such type of child marriages without maintaining any record and such marriage

certificates are used for seeking protection in a petition like the present one.

After hearing the counsel for the parties, this petition deserves to be ***dismissed***, with the following directions:-

i) All the Pujari/Pandit of Mandir, Molwi/Qazi of Masjid, Granthi of Gurudwara and Paadari of Girjaghar in the States of Punjab, Haryana and U.T. Chandigarh, will maintain a proper register of marriages, which maintain a counter-file of performing of a marriage.

ii) In the Marriage Certificate, apart from photographs of the boy and girl, the description of the documents like Aadhar Card, Voter I.D. Card, Matriculation Certificate, Birth Certificate, etc., will be strictly mentioned and a photocopy of such document will be pasted on the backside of the counter file, so maintained by the Pujari/Pandit of Mandir, Molwi/Qazi of Masjid, Granthi of Gurudwara and Paadari of Girjaghar.

iii) The affidavit of a person, who is deemed to be a minor will not be taken as a valid document of age, for the purpose of performing the marriage, unless either of the parent of such person appears and file his/her affidavit.

iv) All the Pujari/Pandit of Mandir, Molwi/Qazi of Masjid, Granthi of Gurudwara and Paadari of Girjaghar in the States of Punjab, Haryana and U.T. Chandigarh, after every three months/quarters of year will produce

their register with counter-file before the SHO having jurisdiction over the area where such Mandir, Masjid, Gurudwara and Girjaghar are situated and will be returned back after an inspection is done by the concerned SHO for verification of age of the parties. Any violation of these directions by the SHO concerned will make him/her liable for disciplinary action.

v) The SHO of the concerned area, where Mandir, Masjid, Gurudwara and Girjaghar are situated, on receiving a complaint regarding a child marriage, will immediately take action under the Prohibition of Child Marriage Act, 2006, against the accused.

Since the alleged marriage of the petitioners was performed within the jurisdiction of SHO, Police Station Mansa Devi Complex, Sector 4, Panchkula, the Registry is directed to communicate this order to the concerned SHO, at the earliest, for taking appropriate action against the accused, under the Prohibition of Child Marriage Act, 2006.

Disposed of accordingly.

A copy of order be sent to Director Generals of Police of Punjab and Haryana as well as Inspector General of Police, U.T. Chandigarh for further issuance of instructions to the SSP/SHO of all Districts.

(ARVIND SINGH SANGWAN)
JUDGE

25.09.2020
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No