

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

**CRWP-7653 of 2020 (O&M)
DATE OF DECISION : 25.09.2020**

Mamta and another

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. D. K. Sharma, Advocate,
for the petitioners.

Mr. Bhupender Singh, DAG, Haryana.

(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 19 years and a boy aged 18 years 09 months and 26 days, 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. Bhupender Singh, DAG, Haryana, who has joined proceedings, on service of advance copy of the petition, accepts notice on behalf of State of Haryana.

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 and 5.

4. Facts, as pleaded in the petition, succinctly are that family of petitioner No.1 were against her wish to marry petitioner no.2. Petitioners got married on 20.09.2020 at Bhambri Devi Jan Kalyan Sansthan, Mansa Devi Market, Sector-4, Panchkula. Photographs of their marriage have been appended with the petition. Petitioners state that after their marriage, private respondents have issued threat to eliminate them in order to save their family prestige.

5. In the circumstances, the petitioners approached respondent No.2 i.e Superintendent of Police, Ambala and submitted a representation dated 21.09.2020 (Annexure P-6) to safeguard their life and liberty, but no action is being taken on the same. Hence the present writ petition.

6. I have heard learned counsel for the petitioners, as also learned State counsel. Without going into the merits of legitimacy of the relationship of the petitioners, I am of the view that the petitioners are entitled to seek protection of their life and liberty, even if it were a case of no marriage but merely a consensual relationship.

7. Both the petitioners are allegedly a run-away couple, despite one of them not being of marriageable age, claim to have married each other forced by the circumstances triggered by the parents of the girl, who wanted to marry her with another boy of their choice.

8. I am conscious of the fact that the boy is not of marriageable age. Marriage, assuming that it took 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. 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.

9. 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***.

10. Reverting to the present case, it appears 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.

11. The issue in hand, however, is not 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.

12. 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.

13. In the premise, without commenting on the legitimacy of the relationship between the petitioners, the writ petition is disposed of with a direction to respondent No.2 i.e Superintendent of Police, Ambala, to verify the contents of the petition, particularly the threat perception of the petitioners and complaints/representation (Annexure P-6) and if deemed fit, to take appropriate steps to provide necessary protection qua their life and liberty in accordance with law.

14. 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.

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

SEPTEMBER 25, 2020
shalini

(ARUN MONGA)
JUDGE

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