

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

**CRWP NO. 7659 OF 2020
DATE OF DECISION : 25.09.2020**

Banshi Lal and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Tarun Seth, Advocate,
for the petitioners.

Mr. Bhupender Singh, DAG, Haryana.

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 non marriageable girl as per Section 5 (iii) of the Hindu Marriage Act, 1955 deciding to be in a live in relationship. Boy aged 24 years and a girl aged 16 years and 09 months, claim herein to be purportedly 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 to 10.

4. Facts, as pleaded in the petition, succinctly are that families of both the petitioners are against their marriage as petitioner No.2 belongs to

Scheduled Caste category and in any case not of marriageable age yet. Both the petitioners ran away and have now decided to be in a live-in relationship till petitioner No.2 gets major. The private respondents are threatening to eliminate the petitioners.

5. In the circumstances, the petitioners approached respondent No.2 i.e Superintendent of Police, Hisar and submitted a representation dated 10.09.2020 (Annexure P-3) 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 a marriage in violation of section 5, *ibid* and/or merely a consensual relationship.

7. Both the petitioners are allegedly a run-away couple, claim to be living together forced by the circumstances triggered by the parents of the girl, who want to marry her with another boy of their choice. They claim that they are mature enough and can think of their good and bad.

8. I am conscious of the fact that the girl is not of marriageable age. Assuming they get married as per Hindu Rites, the same would be 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 declares certain marriages, being 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, issue in hand is not marriage or their live in relationship, 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, Hisar, to verify the contents of the petition, particularly the threat perception of the petitioners and complaints/representation (Annexure P-3) 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 legitimacy of the relationship between 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