

CRWP No.7719 of 2020

Date of Decision : 28.09.2020

Khushpreet Kaur and anr.

...Petitioners

Versus

State of Punjab and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Amit Gupta, Advocate for the petitioners.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.

2. Prayer in the Criminal Writ Petition under Article 226 of the Constitution of India is for the issuance of a writ in the nature of Mandamus for directing respondent Nos.2 and 3 not to harass the petitioners, their family members and relatives at the instance of respondent Nos.4 to 9.

3. Learned counsel contends that admittedly petitioner No.1 is below 18 years of age while petitioner No.2 is 22 years of age but on account of mutual liking they got married on 19.09.2020 as is evident from marriage certificate, Annexure P/3 dated 19.09.2020 though against the wishes of respondent Nos.4 to 9 who are threatening them with harm to their life and liberty. Learned counsel contends that the petitioners submitted representation, Annexure P5, dated 20.09.2020 to respondent No.2, but no action has been taken on the same till date, therefore, the instant petition.

4. Notice of motion to respondent No.1 to 3 only.

5. Mr. V.G. Jauhar, Sr. DAG Punjab accepts notice and states that although the marriage of the petitioners is in violation of Section 5(iii) of the Hindu Marriage Act, 1955 ('the Act' – for short) inasmuch as petitioner No.1 is below 18 years, yet he has no objection if the writ petition is disposed of by directing respondent No.2 to consider and decide the representation, Annexure P/5 dated 20.09.2020 in accordance with law in a time bound manner.

6. I have considered the submissions of learned counsel for the parties.

7. Although the marriage of the petitioners is apparently in violation of Section 5 (iii) of the Act but in the instant petition, the Court is not concerned with the validity of marriage of the petitioners but with the protection of their life and liberty for although Section 11 of the Act declares certain marriages void which have been performed in contravention of Section 5 of the Act but it precludes a marriage solemnized in contravention of Section 5(iii) of the Act from being regarded as void and invalid. Reference in this connection can be made to a decision of a Division Bench of the Delhi High Court in case titled as ***Jitender Kumar Sharma Vs. State and Another*** reported as ***2001 (7) AD (Delhi) 785***. Relevant extract of the same is reproduced hereinbelow:-

“It is true that one of the conditions of a hindu marriage is that the bride should have completed 18 years age and the bridegroom, 21 years. But, does this mean that a marriage where this twin condition as to ages is not satisfied is, ipso facto, invalid or void? An examination of Section 11 of the HMA would seem to suggest otherwise. The said provision is as under:-

11. Void marriages- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a

petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

Though five conditions have been stipulated in Section 5, only the contravention of three of them, namely, clauses (i) (iv) and (v) would render the marriage to be null and void. Clause (iii) of section 5, which is the condition with regard to the minimum ages of the bride and bridegroom, is conspicuous by its absence. As a result, a hindu marriage solemnized in contravention of clause (iii) of section 5 of the HMA cannot be regarded as a void or invalid marriage. We are not oblivious of section 18 of the HMA which prescribes punishment for contravention of certain conditions for a hindu marriage. It reads as under:-

18. Punishment for contravention of certain other conditions for Hindu marriage.- Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv) and (v) of Section 5 shall be punishable-

a) in the case of contravention of the condition specified in clause (iii) of Section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both;

b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of Section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

*c) (***)*

But, the fact that punishment has been provided for contravention of the condition specified in section 5 (iii) of the HMA does not mean that the marriage itself is void or

invalid. If the legislature had intended that such a marriage would be void or invalid, it could have easily included clause (iii) of section 5 in Section 11 itself. Only clauses (i), (iv) and (v) of section 5 are specifically mentioned in section 11. The only conclusion is that the legislature consciously left out marriages in contravention of the age stipulation in clause (iii) of section 5 from the category of void or invalid marriages.

xxx-----xxx-----xxx-----xxx

Before we proceed further, under Hindu law there are essentially two kinds of marriages-void marriages or valid marriages. The latter category has a sub-category of voidable marriages. A marriage in contravention of clause (iii) of section 5, as we have seen above, does not fall in the category of void marriages specified in section 11 of the HMA nor does it fall in the category of voidable marriages specified in section 12. Consequently, by the process of elimination, it would be a valid marriage. Of course, the marriage may be dissolved through a decree of divorce, but, that would have to be on the grounds specified in section 13 of the HMA. Interestingly, section 13 (2) (iv) enables a 'wife' to petition for dissolution of her marriage on the ground:-

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

What does this show? It shows that even a marriage of a minor girl below the age of fifteen is regarded as valid and can only be dissolved on her petition, provided she repudiates the marriage between the time she is 15 years old and 18 years old."

8. Apparently, one of the conditions of a valid marriage under the

be above 21 years of age. Although, Section 11 of the Act declares certain marriages, which are in contravention of Section 5 of the Act, to be void, but precludes a marriage solemnized in contravention of Section 5(iii) of the Act from being regarded as void and invalid.

9. As per the documents attached with the writ petition, the petitioners have solemnized a marriage in contravention of Section 5(iii) of the Act. However, be as it may, it is incumbent upon the official respondents to ensure protection of life and liberty of the petitioners.

10. Accordingly, in view of the decision of Hon’ble the Supreme Court in Lata Singh vs. State of UP and others, JT 2006 (6) SC, 173 but without commenting upon the validity of the marriage or the documents attached to the writ petition, the criminal writ petition is **disposed of** by directing respondent No.2 to consider and decide the representation (Annexure P-5) dated 20.09.2020, in accordance with law, as expeditiously as possible and to take such action, in respect thereto in accordance with law as may be warranted in the facts and circumstances of the case, including by providing protection to the life and liberty of the petitioners, if the circumstances of the case so warrant on appreciation of threat perception to the petitioners at the hand of respondent Nos.4 to 9. However, it is made clear that this order shall not bar any civil or criminal proceedings initiated against the petitioners in accordance with law.

(B.S. Walia)
Judge

September 28, 2020
'Rajneesh-Amit'

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