

105.

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

CRR-1710-2019 (O&M)

Date of decision: 04.02.2020

KALAWATI AND ANOTHER

... Petitioners

versus

STATE OF PUNJAB AND ANOTHER

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rahul Bhargava, Advocate,
for the petitioners.

Ms. Ruchika Sabherwal, AAG, Punjab.

HARI PAL VERMA, J.(Oral)

CRM-21952-2019

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 430 days in filing the present revision petition.

For the reasons stated in the application, same is allowed and the delay of 430 days in filing the present revision petition is condoned.

CRR-1710-2019

Petitioners have filed the present revision petition impugning the order dated 12.02.2018 passed by the learned Judicial Magistrate Ist Class, Abohar, whereby in FIR No.127 dated 18.12.2017, under Sections 363, 366-A, 120-B of IPC and Sections 3 & 4 of POCSO Act, Police Station

Bahawala, District Fazilka, the prosecutrix has suffered a statement before the learned Magistrate that she does not want to go with her parents and, therefore, was ordered to be sent to the State Protective Home, Basti Gujran Jalandhar City.

Learned counsel for the petitioners has argued that petitioner No.1 is the mother of petitioner No.2 and respondent No.2 in the case has solemnized marriage with petitioner No.2-Mukesh Kumar on 20.12.2017. Since petitioner No.2 and respondent No.2 have solemnized marriage against the wishes of parents of respondent No.2, the aforesaid FIR has been registered against the petitioners. After the registration of FIR, petitioner No.2 was apprehended on 09.02.2018 and was sent to judicial custody at Central Jail, Ferozepur. Similarly, respondent No.2 appeared before the Magistrate on 12.02.2018 at Abohar and was sent to Nari Niketan and since then, she is detained there against her wishes.

Learned counsel submits that petitioner No.2 has already been granted concession of bail, pending trial, vide order dated 13.09.2018 passed by this Court. He refers to the judgment passed by this Court in ***CRWP-947-2018*** titled as ***Paramjit Singh Versus State of Punjab and others, dated 06.12.2018*** to contend that when the victim (in that case) being about 16 years of age, her custody was given to the husband. In the case in hand, the date of birth of the victim is 24.04.2002 and as on date, she is about 17 years and 10 months. Reliance has also been placed on the judgment passed in ***Court on its own motion Versus State of Punjab-2015(2) R.C.R. (Criminal) 792*** and ***Bhaga Ram Versus State of Rajasthan-2009(14) R.C.R. (Criminal) 119*** and in that case, while considering the age of the

victim about 16 ½ to 17 years wherein she has shown her inclination to go with the husband, the custody was handed over to the husband.

Learned State counsel, who is assisted by HC Partap Singh, does not dispute the date of birth of the prosecutrix. However, she submits that the prosecutrix has not attained the age of majority and it is not safe to handover her custody to the husband instead of her parents.

I have heard learned counsel for the parties.

The prosecutrix is present in person and she has been interacted by the Court. She states that her date of birth is 24.04.2002 and she has solemnized marriage with petitioner No.2-Mukesh Kumar and wants to go with petitioner No.2.

Considering the fact that the prosecutrix is staying in Nari Niketan since 12.02.2018 and now she is on the verge of attaining the age of majority which is 18 years (short of 2 months), without commenting upon the validity of the marriage, this Court deems it appropriate to handover the custody of respondent No.2 to the petitioners.

Accordingly, the order dated 12.02.2018 passed by the learned Judicial Magistrate Ist Class, Abohar, is set aside and the petitioners are given the custody of respondent No.2, however, that would be subject to payment of costs of Rs.10,000/- to be deposited with the Poor Patients' Welfare Fund of the Postgraduate Institute of Medical Education and Research (PGIMER), Chandigarh. The custody of respondent No.2 would be taken from Nari Niketan itself after completing all the necessary formalities, if any, by the parties.

However in case respondent No.2 finds that she is being harassed or maltreated in any manner, she would be at liberty to approach the police authority.

Petition stands disposed of accordingly.

(HARI PAL VERMA)
JUDGE

04.02.2020
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No