

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

132(2)

CRM-M-38750-2020

Date of decision: 21.12.2020

KULWINDER KAUR

.....Petitioner.

Versus

STATE OF PUNJAB AND OTHERS

.....Respondents.

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Surmeet S. Sandhu, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab
for respondents No.1 and 2.

Ms. Isha Goyal, Advocate
for respondent No.3.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

The petitioner has filed the present petition under Section 482 of Code of Criminal Procedure, 1973 for quashing of the order dated 19.10.2020 passed by learned Sub Divisional Judicial Magistrate, Bholath, Kapurthala in case FIR No.111 dated 19.10.2020 registered under Section 9 of the Prohibition of Child Marriage Act, 2006 in Police Station Begowal, Kapurthala whereby Mandeep Kaur, born on 04.03.2003 and then aged 17 years 7 months and 15 days, was ordered to be kept in Children Protection Home (Gandhi Vanita Ashram) Jalandhar.

Briefly stated, the petition has been filed on the averments that Mandeep Kaur has solemnized marriage with son of the petitioner

namely Gagandeep Singh on 01.09.2020 and had along with him filed petition CRWP No.7056-2020 for protection of their life and liberty. Respondent No.3-biological mother of Mandeep Kaur made representation to the Senior Superintendent of Police, Kapurthala for registration of case against Gagandeep Singh. FIR No.111 dated 19.10.2020 was registered under Section 9 of the Prohibition of Child Marriage Act, 2006 in Police Station Begowal, District Kapurthala against Gagandeep Singh who was arrested in the case and produced before learned Sub Divisional Judicial Magistrate, Bholath, Kapurthala along with Mandeep Kaur. Gagandeep Singh was sent to police custody while Mandeep Kaur was ordered to be sent to Children Protection Home (Gandhi Vanita Ashram) Jalandhar vide order dated 19.10.2020. Vide order dated 21.10.2020 Gagandeep Singh was granted bail by the Court of learned Sub Divisional Judicial Magistrate, Bholath, Kapurthala. Vide order dated 16.10.2020 passed in ***CRWP No.4181 of 2020 titled as Preeti and another versus State of Haryana and others***, Co-ordinate Bench of this Court granted custody of a minor girl, who had solemnized marriage, to her mother-in-law. Therefore, the petition may be allowed and order dated 19.10.2020 passed by learned Sub Divisional Judicial Magistrate, Bholath, Kapurthala may be quashed and custody of Mandeep Kaur may be ordered to be given to the petitioner.

The petition has been opposed by learned State counsel and learned counsel for respondent No.3. However, no reply to the petition has been filed.

Vide order dated 25.11.2020, while issuing notice of

motion, respondent No.2 was directed to ensure the presence of detenue-Mandeep Kaur on the date fixed i.e. 15.12.2020 before this Court through video conferencing.

In compliance with order dated 25.11.2020 respondent No.2 produced detenue-Mandeep Kaur before this Court on 15.12.2020 through whatsapp call. On being asked detenue-Mandeep Kaur stated that she has performed marriage with Gagandeep Singh and she wants to go with her mother-in-law petitioner-Kulwinder Kaur.

I have heard learned counsel for the petitioner, learned State Counsel and learned Counsel for respondent No.3.

Learned counsel for the petitioner has, while reiterating the factual averments and relying on the observations in judgment of the Coordinate Bench in ***CRWP No.4181 of 2020 titled as Preeti and another versus State of Haryana and others***, submitted that in view of willingness expressed by Mandeep Kaur to live with the petitioner, custody of Mandeep Kaur may be ordered to be handed over to the petitioner.

On the other hand, learned counsel for respondent No.3 has submitted that Mandeep Kaur, being minor, may be kept in Children Protection Home (Gandhi Vanita Ashram), Jalandhar till she attains majority and her custody may not be handed over to the petitioner and the petition may be dismissed.

Learned State counsel for respondents No.1 and 2 has submitted that respondents No.1 and 2 will comply with the order to be passed by the Court.

In ***CRWP No.4181 of 2020 titled as Preeti and another***

versus State of Haryana and others Preeti aged 16 years and 10 months and Sahil aged 18 years ran away from their homes on 18.06.2020 and solemnized marriage on 23.06.2020. Hon'ble Coordinate Bench of this Court, while ordering handing over of the custody of Preeti to her mother-in-law, who accepted Preeti as her daughter-in-law and was prepared to stand by their marriage, observed as under:-

“As on date, Preeti is 10 months short of attaining majority. It is not as if, upon the clock striking 12 midnight on the eve of her 18th birthday, Preeti would magically assume the mental maturity and wisdom to claim the status of an adult. The age of majority as prescribed must therefore be construed and interpreted in the context of the law for which it is being considered and in a case of this nature, where the minor is certain and unshaken in her opinion and desire, it would not be right and proper for this Court to brush aside her views on the ground that she is not 18 years of age as on date and is only 17 +.

This Court therefore does not deem it appropriate to direct that Preeti's custody should be forcibly entrusted to her parents against her wishes or that she should be kept in a Protection Home till she attains the age of 18 years. It would suffice at this stage if Preeti is allowed to go with Neelam, Sahil's mother, and remain with her till she attains the age of 18 years. Neelam shall be bound by the affidavit filed by her before this Court and take care of Preeti to the best of her capacity and ability. However, as Neelam is not her legal guardian and she is being entrusted Preeti's custody only as per the desire and wish expressed by Preeti herself, it would be appropriate that the Child Welfare Committee, Sonipat, monitors Preeti's well-being till she attains the age of 18 years while she remains in Neelam's custody. The Chairperson of the Child Welfare Committee, Sonipat, is accordingly directed to depute a Child Welfare Officer to randomly visit Neelam's residence at Kakroi, District Sonipat, twice a month to ensure that Preeti is being well cared for and to ascertain whether she has any complaints. The Child Welfare Committee, Sonipat, shall take on record the reports of such Child Welfare Officer and monitor the case till Preeti attains the age of 18 years.”

I am in full agreement with the observations made by

Hon'ble Coordinate Bench. However, it may be added here that in view of the observations of this Court in *CRM-M-22389-2020 titled as Parminder Singh Vs. State of Haryana and another decided on 24.09.2020* Gagandeep Singh will not be entitled to consummate the marriage till Mandeep Kaur attains the age of 18 years. In view of the facts and circumstances of the present case, willingness of Mandeep Kaur to live with her mother-in-law Kulwinder Kaur (the petitioner) and acceptance by the petitioner of Mandeep Kaur as her daughter-in-law, I am of the considered view that it will be appropriate that custody of Mandeep Kaur is handed over to the petitioner and Mandeep Kaur is allowed to live with the petitioner subject to the following conditions:-

- (i) that the petitioner shall submit an affidavit before learned Sub Divisional Judicial Magistrate/Duty Magistrate, Bholath, Kapurthala that the petitioner will take care of Mandeep Kaur to the best of her capacity and ability;
- (ii) that the petitioner shall also submit her personal bond in the sum of Rs.1,00,000/- before learned Sub Divisional Judicial Magistrate/Duty Magistrate, Bholath, Kapurthala undertaking that she shall not allow her son Gagandeep Singh to consummate the marriage till Mandeep Kaur attains the age of 18 years. In case of any default, the amount of Rs.1,00,000/- shall be liable to be realised by learned Sub Divisional Judicial Magistrate, Bholath, Kapurthala from the petitioner as penalty under Section 446 of the Cr.P.C.;
- (iii) that the petitioner shall ensure payment of amount of Rs.5,000/- per month to Mandeep Kaur as personal expenses till she attains majority; and
- (iv) that in case of breach of any of these conditions, the

petitioner shall also be liable to punishment for contempt of this Court.

In view of the above discussion, the petition is allowed and order dated 19.10.2020 passed by learned Sub Divisional Judicial Magistrate, Bholath, Kapurthala is set aside with the direction that custody of Mandeep Kaur be ordered to be handed over to the petitioner-Kulwinder Kaur (mother-in-law) on submission of the affidavit and personal bond in compliance with the aforesaid conditions before learned Sub Divisional Judicial Magistrate/Duty Magistrate, Bholath, Kapurthala.

However, the Chairperson of the Child Welfare Committee, Kapurthala is directed to depute a Child Welfare Officer to randomly visit the house where Mandeep Kaur would be residing with her mother-in-law periodically to ensure that Mandeep Kaur is being looked after properly. The Child Welfare Committee, Kapurthala shall take on record the reports of such Child Welfare Officer and move this Court for appropriate directions, if so considered to be necessary.

21.12.2020
vishal

(ARUN KUMAR TYAGI)
JUDGE

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