

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

**CRWP-9765-2020 (O&M)
Date of decision: 25.11.2020**

Bharti Bagla and another

... Petitioners

Versus

The State of Punjab and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Navraj Singh, Advocate for the petitioners.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

ALKA SARIN, J. (ORAL)

Heard through video conferencing.

The present criminal writ petition has been filed under Articles 226/227 of the Constitution of India for enforcement of fundamental right of the petitioners seeking protection of their life and liberty as enshrined under Article 21 of the Constitution of India.

In brief, the relevant facts are that the petitioners have known each other for the last more than two years. Initially, the parents of both the petitioners had agreed to the marriage of the petitioners. However, once petitioner No.1 passed the IELTS Test on 08.02.2020, the parents of petitioner No.1 wanted her to get married with another boy. The petitioners, solemnized their marriage on 19.11.2020 against the wishes of respondent Nos.4 to 7. Since the parents of petitioner No.1 i.e. petitioner Nos.4 to 7 were against their marriage, the petitioners also sent a representation dated

20.11.2020 (Annexure P-5) to respondent Nos.2 and 3 for protection of their life and liberty. However, no action has been taken on the same.

Notice of motion.

On the asking of the Court, Mr. Ramandeep Sandhu, Sr. DAG, Punjab, who has joined the session through video conferencing, accepts notice.

Heard learned counsel for the parties.

In the present case, this Court without expressing any opinion on the validity of the marriage of the petitioners needs to consider as to whether the apprehension of the petitioners needs to be addressed.

This Court is aware of the fact that the date of birth of petitioner No.1 is 19.11.2001 and she is major and of marriageable age. Date of birth of petitioner No.2 is 19.11.2001. Though he is major, but he is not yet of marriageable age as envisaged in Section 5(iii) of the Hindu Marriage Act. Division Bench of Delhi High Court in the case of “**Jatinder Kumar Sharma V/s State and another**” reported as 2010 SCC online Delhi 2705, dealt with the complex issue regarding the marriage between two people ineligible to be married as envisaged under Section 5(iii) of the Hindu Marriage Act. In para 15, it was held by the Division Bench as under:-

“15. Returning to the facts of the present case, we find that, merely on account of contravention of clause (iii) of section 5 of the HMA, Poonam's marriage with Jitender is neither void under the HMA nor under the Prohibition of Child Marriage Act, 2006. It is, however, voidable, as now all child marriages are, at the option of both Poonam and Jitender, both being covered by the word 'child' at the time of their marriage. But, neither seeks to exercise this option and both want to reinforce and strengthen their marital bond by living together. We also

find that stronger punishments for offences under the Prohibition of Child marriage Act, 2006 have been prescribed and that the offences have also been made cognizable and non-bailable but, this does not in any event have any impact on the validity of the child marriage. This is apparent from the fact that while the legislature brought about these changes on the punitive aspects of child marriages it, at the same time brought about conscious changes to the aspects having a bearing on the validity of child marriages. It made a specific provision for void marriages under certain circumstances but did not render all child marriages void. It also introduced the concept of a voidable child marriage. The flip-side of which clearly indicated that all child marriages were not void. For, one cannot make something voidable which is already void or invalid.”

In the present case, the date November 19 plays a crucial role in the lives of the petitioners. Both the petitioners were born on November 19 and the date they chose for their marriage is also November 19.

Though the issue in hand is not with regard to the validity of the marriage, but the fact is that the petitioners are seeking protection of life and liberty as envisaged under Article 21 of the Constitution of India. Article 21 of the Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of his life and personal liberty except as per the procedure established by law. In the present case, no doubt petitioner No.2 is not of marriageable age as envisaged under Section 5(iii) of the Hindu Marriage, however, this Court cannot shut its eyes to the fact that the apprehension of the petitioners needs to be addressed. Merely because petitioner No.2 is not of marriageable age,

he cannot be possibly deprived of his fundamental rights as envisaged in the Constitution of India.

In view of the above discussion and without expressing any opinion with regard to the veracity of the contents of the petition and the submissions made by learned counsel for the petitioners, the present petition is disposed of with a direction to respondent No.2/Senior Superintendent of Police, Rural Jalandhar (Punjab) to decide the representation dated 19.11.2020 (Annexure P-5) and take necessary action as per law.

It is, however, made clear that this order shall not, in any manner, be construed as an expression of the opinion on the veracity of the statement made by the petitioners or on the validity of the marriage and shall have no effect on any other civil or criminal proceedings, if any, instituted/pending against them.

25.11.2020

Yogesh Sharma

**(ALKA SARIN)
JUDGE**

Whether speaking/reasoned

Yes/ No

Whether Reportable

Yes/ No