

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

CWP No.20480 of 2020

Date of decision : December 14, 2020

Ami Ranjan and another

..... Petitioner

Versus

State of Haryana and another

..... Respondents

(IN VIRTUAL COURT)

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Nipun Vashist, Advocate for the petitioners.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition under Article 226/227 of the Constitution of India praying for issuance of writ in the nature of certiorari to quash the impugned letter/order dated 11.09.2020 (Annexure P-12) issued by the learned Deputy Commissioner-cum-Marriage Officer, Gurugram, whereby; in response to a request made by the petitioners, the abovesaid officer has intimated to them that there was no provision for registration of a marriage under the Special Marriage Act, 1954 (hereinafter referred as 'the Act') without the parties appearing in person before the Marriage Officer; and it has further been intimated that the petitioners may get their marriage registered by being present in the office of the Marriage Officer, Gurugram on any working day.

As per the facts pleaded in the writ petition, the petitioner No.1 is working as IT Consultant with a company named Publicist Sapient in

London, United Kingdom since December, 2017. Similarly, petitioner No.2 is a USA citizen of Indian origin and has been living in United States. She is employed at Virginia University School of Medicine as a Resident Doctor. The petitioners solemnized their marriage on 07.12.2019 according to Hindu Rights and Ceremonies in the presence of their respective families at Gurugram in Haryana. As can be gathered from the facts pleaded in the petition, thereafter, the petitioners returned to their respective work places in United Kingdom and United States on 10.12.2019 and 15.12.2019 respectively. Subsequently, the petitioners applied for registration of their marriage under the Act. For that purpose the petitioners moved an application for registration of their marriage before the Deputy Commissioner-cum-Marriage Officer, Gurugram on 29.01.2020. Since the parties had already left for their respective places, therefore, request was made to the Marriage Officer to permit petitioner No.2 to appear through video conference for the purpose of moving the application for registration of marriage. Accordingly, the said request was, statedly, permitted by the Marriage Officer and the procedure for registration of the marriage was initiated. However, since the parties were required to be personally present at the time of final stage of registration of the marriage, therefore, the Marriage Officer had informed the parties that their request for video conferencing cannot be acceded to at that stage of proceedings because there was no provision in the Act authorising him to do so. It is against this order that the present writ petition has been preferred by the petitioners.

Arguing the case, learned counsel for the petitioners has submitted that after holding enquiry to satisfy himself, the Marriage Officer

had called the petitioners to appear before him on 03.04.2020. However, in the meantime, due to spread of COVID-19 Pandemic, the petitioners could not return to India. Even the Government of India had imposed a nation wide lock-down on 24.03.2020. Therefore, the parties could not come to India despite having booked their air tickets. Accordingly, only in the prevalent difficult situation petitioner No.1 had filed application dated 07.08.2020 before the Marriage Officer making a request that second motion hearing may also be conducted through video conference. However, the said application has wrongly been rejected vide impugned letter/order dated 11.09.2020. The learned counsel has further submitted that petitioner No.2 is a medical professional and she had been put on COVID-19 emergency duty in United States, therefore, she could not visit India. Still further, it is submitted that even the Government of India has suspended the VISA services. Therefore, petitioner No.2 could not enter India. Although, petitioner No.1 could go to United States to meet his wife there, however, even that is dependent upon a condition precedent that petitioner No.1 shall have to attach a marriage certificate along with an application for obtaining VISA. Hence, it is submitted that because of the lack of the marriage certificate, the parties are facing an unprecedented hardship.

The learned counsel for the petitioners has further submitted that the parties have applied for the registration of their marriage under Section 16 of the Act. They have fulfilled all the conditions as prescribed under the Act. It is also submitted that under Section 16 the Marriage Officer has merely to enquire whether the conditions as laid down under Section 15 of the Act are fulfilled or not. This Section nowhere requires the

personal appearance of the parties before him. Learned counsel has also submitted that even the requirement of signing the certificate in the presence of respondent No.2 is absent in Section 16 of the Act. Carrying forward his argument, learned counsel has further submitted that the Act and the Rules thereunder were framed wayback in the year 1956 and the Act does not visualize a situation which is prevalent today and that the Rules and procedure prescribed thereunder do not take into account the technological advances and the facilities such as video conference available today. Therefore, the provisions of the Act has to be interpreted in such a manner that the object and purpose of the Act is not defeated by such interpretation. Requiring the parties to be present in person is an onerous and harsh condition which would entail considerable expense and wastage of time, as well as, an exposure to COVID-19 disease. To support his submissions, learned counsel for the petitioners has relied upon the judgment of Kerala High Court in case titled as ***“Pardeep Kodiveedu Cletus v Local Registrar of Marriages”*, 2018(1) KLT 292** and the order/judgment of Delhi High Court rendered in case of ***“Charanjit Kaur Negi v Govt. of NCT Delhi”*, 2007(42) RCR (Civil) 222**. Relying upon the said judgments, the learned counsel has submitted that this Court should avoid any such construction of the provisions of the Act, which would cause unjustified inconvenience to the petitioners and further; that the parties can be asked to be present before the Embassy/Consulate of India in United States and United Kingdom to authenticate their identity. Accordingly, the identity of the petitioners can be verified through the government authorities in the respective countries. That would be the sufficient compliance of the provisions of the Act.

I have heard the learned counsel for the petitioners.

Before proceeding further, it is appropriate to have a reference to the relevant provisions of the Act, which relate to the registration of a marriage, which are as under:-

15. Registration of marriages celebrated in other forms.-

Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special Marriage Act, 1872 or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since

(b) neither party has at the time of registration more than one spouse living;

(c) neither party is an idiot or a lunatic at the time of registration:

(d) the parties have completed the age of twenty-one year at the time of registration;

(e) the parties are not within the degrees of prohibited relationship: Provided that in case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

(f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

16. Procedure for registration.- Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this chapter, the Marriage Officer shall give public notice thereof in such

manner as may be prescribed and after allowing a period of thirty days for objection and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in Sec. 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the Form specified in the Fifth Schedule and such certificate shall be signed by the parties to the marriage and by three witnesses.

18. Effect of registration of marriage under this Chapter.-

Subject to the provisions contained in sub-section (2) of Sec.24 where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents: Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.

47. Marriage Certificate Book to be open to inspection--(1)

The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection and shall be admissible as evidence of the statements therein contained.

(2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.

THE FIFTH SCHEDULE (See section 16)
CERTIFICATE OF MARRIAGE CELEBRATED IN
OTHER FORMS I, E.F., hereby certify that A.B. and CD.*
appeared before me thisday of..... 20 and that

each of them, in my presence and in the presence of three witnesses who have signed hereunder have declared that a ceremony of marriage has been performed between them and that they have been living together as husband and wife since the time of their marriage, and that in accordance with their desire to have their marriage registered under this Act, the said marriage has, this day of 20..... been registered under this Act, having effect as from.”

A bare perusal of the abovesaid provisions show that the Act prescribes a procedure whereby both the parties to the marriage are required to make an application signed by both of them. Then a public notice is required to be given by the Marriage Officer for inviting objections. Thereafter, if the Marriage Officer is satisfied that the conditions mentioned in Section 15 are fulfilled, the certificate of marriage is to be entered in the Marriage Certificate Book. Even the form of marriage certificate to be entered in the Marriage Certificate Book is prescribed by the Act itself. Not only this, when a certificate of marriage has been entered into the Marriage Certificate Book then the said marriage has been conferred the status of a marriage having been solemnized under this Act and the children of such marriage have been given certain rights. Further more, the Act prescribes that Marriage Certificate Book shall be admissible as evidence of the statements contained therein. Accordingly, it is obvious that the statute has prescribed all the conditions and procedures which are required for registration of a marriage which is performed outside the procedure prescribed under the Act. In case of a marriage under the Act it has to be solemnized in the presence of the Marriage Officer. If the Marriage Officer entertains any doubt on any aspect then instead of solemnizing the marriage

between the parties, he is required to send the matter to the Central Government as per Section 10 of the Act, whose decision shall be final on the matter. As per Section 11 of the Act, parties and witnesses are also required to sign declaration qua marriage in the presence of Marriage Officer as per Section 11 of the Act. If the marriage is performed by parties as per a particular form chosen by them, even then the parties are required to pronounce their marriage with each other in the presence of the Marriage Officer under Section 12 of the Act. After the above procedure is followed the Marriage Officer is authorised to enter the certificate of such marriage in the certificate book in the form as mentioned in the Fourth Schedule attached to the Act. Such certificate book is to be signed by the parties and the witnesses. Hence it is clear that for the marriages performed as per the procedure prescribed under the Act everything is prescribed to be done in the presence of the Marriage Officer so as to make it an authentic Act. Likewise, the Act contemplates the registration of marriage performed outside the provisions of the Act. Section 15 prescribes conditions and Section 16 prescribes the procedure for such registration. Since such marriage is performed outside the procedure prescribed under the Act, therefore, the detailed conditions and procedure have been laid down by the Act itself; so as to ensure the authenticity of what the Marriage Officer was required to do. Therefore, besides giving the power to the Marriage Officer to satisfy himself as to the factum of conditions prescribed by Section 15 of the Act having been fulfilled; the Act requires the parties to make an application under their own signatures and to join the proceedings of the inquiry. After the inquiry is completed, the Act prescribes the entry of the certificate of

registration in the Marriage Certificate Book by the Marriage Officer. Such certificate, as entered in the book is required to be signed by the parties and the witnesses. Since the entry in the Marriage Certificate Book is to be made by the Marriage Officer, the certificate book is kept in the office of the Marriage Officer and it is the Marriage Officer, who is to authenticate all these process and then to issue the certificate to the parties, therefore, to bring such registration at par with those of the marriages performed under the Act it is necessary that the parties come present before the Marriage Officer. Hence, this Court does not find any substance in the argument of the learned counsel for the petitioners that the Act does not require the presence of the parties before the Marriage Officer for registration of their marriage.

Although, learned counsel for the petitioners has submitted that appearance of the parties before the Marriage Officer would entail huge expenses and inconvenience to the parties however, it is more than settled by now that inconvenience to the parties is no ground to interpret the law in the manner different than what is intended and prescribed in the statute. Moreover, a bare perusal of the impugned order shows that the Marriage Officer has not disentitled the petitioners from registration of the marriage altogether and for all the times. He has only asked the parties to come present and to sign the certificate in his presence. That can be done by the parties at any time as per the provisions of the law, either pursuant to the present application or by moving a separate application at any other convenient time. Merely because the petitioners are working in foreign countries and their working conditions or their personal compulsions render

it difficult to be present before the Marriage Officer is no ground to overlook the provisions of law; which mandate the presence of parties for signing the certificate in the Marriage Certificate Book.

Learned counsel for the petitioners has submitted that the provisions should be interpreted in such a manner, which facilitate the issuance of the certificate to the parties. It is further submitted that the purpose of the Act is merely to register the marriage, therefore, the insistence upon personal appearance is not commensurate with purpose of the Act. If the parties can appear before the Marriage Officer through video conference, then the process could be taken to have been duly complied with in accordance with law. Hence, the Marriage Officer can be directed to resort to the video conferencing to complete the process of the registration of the marriage. However, this Court does not find itself in agreement with the submission of the learned counsel for the petitioners. The purpose and the object of the Act is not to register the marriage alone. Rather, the purpose of the Act is to attach the State authenticity under a public law to an otherwise private act of the parties; which would have been governed by private contract or personal law of the parties. Hence the obvious purpose of the statutory provisions is to introduce the authenticity which the State authorities can vouchsafe and certify at subsequent stages and for legal purposes. It is only such authenticity attached to the process of registration which would govern the *inter-se* rights of the parties and their off-springs under the Act and even qua their right to succession under the other laws; as prescribed under this Act. Therefore, to ensure the authenticity of every Act done as claimed by the parties, as well as, of the actions of the State

authorities, the procedure contemplated by the Act has to be strictly complied with. This aspect is sufficiently amplified by the provisions of the Act which makes the Marriage Certificate Book to be an admissible evidence qua the statements contained therein. For claiming authentication of the state action qua the registration of the marriage, the Marriage Certificate Book has to be in existence in the same manner in which it has been prescribed and it has to be prepared in exactly the same manner in which it has been prescribed. Resorting to any other procedure, obviously, would be a violence to the language and intent of the statutory provisions. Needless to say that any sympathy on account of inconvenience to the parties or on account of the prevalent difficult situation would be totally misplaced and would be nothing more than a casual attempt to side tract the requirements of the law; which are necessary for attaching the authenticity to the document for registration of marriage, as well as, to the record of the said acts as maintained in the public office.

Although, learned counsel for the petitioners have brought to the notice of this Court the abovesaid mentioned judgments of Delhi High Court and Kerala High Court, however, this Court finds itself in respectful disagreement with the abovesaid judgments. A perusal of the judgments shows that the judgments travel beyond the scope of the procedure prescribed under the Act. Rather, one of the judgments is in the nature of prescribing an altogether a new procedure qua the appearance of the parties, qua satisfaction of the Marriage Officer, as well as, qua maintenance of the public record called the Marriage Certificate Book. The process of video conferencing could have been resorted to, at the best, during the

intermediatory process of the inquiry to be conducted by the Marriage Officer. It is not even disputed that in the present case also, the Marriage Officer has accommodated the parties at the initial stage and had permitted petitioner No.1 to be present before him through video conference at the stage of first motion and moving of the application. However, at the end of the process the parties cannot be excused from being present before the Marriage Officer for any reason whatsoever. This is so because the parties are prescribed to be present to sign the Marriage Certificate Book in the office of the Marriage Officer and in the presence of the witnesses. It is obvious that the Marriage Certificate Book cannot be signed by a party through a distant mode. Signing the certificate book cannot be interpreted to mean pasting of authenticated sign of a party on that book. Anything else or any other mode of authentication of signature of a party, other than original signatures; would only be the secondary mode of authentication which is not contemplated by the Act nor is permissible or even desirable in the interest of the originality, the integrity and the authenticity of the Marriage Certificate Book; which is prescribed to govern the rest of the life of the parties to the marriage and their off-springs.

Accordingly, this Court finds that at the end stage of the process of registration of marriage of the parties, the parties cannot be exempted from being personally present before the Marriage Officer where they are required to sign the Marriage Certificate Book, which is a public record maintained at a particular office of a District Marriage Officer. Hence this Court does not find any illegality or impropriety in the course of action adopting by the Deputy Commissioner-cum-Marriage Officer.

Accordingly, the present petition is dismissed being devoid of any merit.

(RAJBIR SEHRAWAT)
JUDGE

December 14, 2020

sarita	
Whether speaking / reasoned	Yes
Whether Reportable:	Yes