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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP No.10067 of 2020 (O&M)

Date of decision: 21.12.2020

Neelam Rani and another

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Munish Gulati, Advocate
for the petitioners.

Mr. Dhruv Dayal, DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

On 04.12.2020, the following order was passed by this

Court:-

“Prayer in this petition is to protect the life and liberty of the petitioners.

As per the averments made in the petition, the petitioners have allegedly solemnized marriage on 30.11.2020 in Gurudwara Kalgidhar Sahib, Shanti Nagar, Ferozepur, District Ferozepur. Counsel for the petitioners further submits that the date of birth of petitioner-Neelam Rani is 24.7.2002.

Ms. Gurvir Kaur Gill, Advocate puts in appearance on behalf of respondents No.4 and 5, who are parents of petitioner No.1-Neelam Rani and raised a serious objection regarding the age of petitioner No.1-Neelam Rani and have placed on record a certificate issued by the Punjab School Education Board, showing the date of birth of petitioner No.1-Neelam Rani as 19.6.2004, as per which, her age is about 15½ years and she is below 16 years of age. Counsel for respondents No.4 and 5 further submits that they have already given a complaint to the police in this regard.

After hearing the counsel for the parties, it is apparent that the marriage of the petitioners has been performed in violation of Section 9 of the Prohibition of

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Child Marriage Act, 2006 and the Head Granthi, who has issued the certificate (Annexure P-3) after performing the marriage of the parties is liable for prosecution for performing the marriage of petitioner No.1-Neelam Rani (minor).

List again on 21.12.2020.

In the meantime, the Senior Superintendent of Police, District Ferozepur is directed to produce both the petitioners before the Chief Judicial Magistrate, Ferozepur on 8.12.2020. The Chief Judicial Magistrate will record the statements of the petitioners as well as the statement of respondents No.4 and 5 about the age of petitioner-Neelam Rani and will submit a report in this regard on or before the next date of hearing.

The Senior Superintendent of Police, Ferozepur is also directed to take appropriate action against the aforesaid Head Granthi, in accordance with law.

In pursuance thereof, the Chief Judicial Magistrate, Ferozepur, has submitted a report. The operative part of the said report, reads as under:-

“From the bare perusal of documents available on record, and detailed scrutiny of report Ex.A20 submitted by the IO, the undersigned is of the considered opinion that the writing Ex.A15, issued by Govt. Primary School, Bharoli Bhann, Fazilka and that of writing Ex.A16, issued by Govt. Middle School, Chak Arni Wala, reflecting the date of birth as 19.06.2004, are genuinely related to petitioner Neelam Rani. However, the documents viz-a-viz Ex.A17, Ex.A18, Ex.A19, Ex.A20, Ex.A21 and Ex.A22, issued by various other schools, reflecting the date of birth of student namely, Neelam Rani d/o Kulwant Singh as 24.07.2002 and student's mother name as Saroj Rani, are not at all related to petitioner Neelam Rani.

Most importantly, the respondent No.5 Soma Rani, while appearing before the undersigned made her statement, thereby specify stating that she is not known by Saroj Rani and her only name is SOMA RANI. Morevoer, from the perusal of copy of ration card Ex.A6, issued in the year 2007, the elder son Ajay Kumar of respondent No.4 (having born in the year 2001), is three years eldest from petitioner No.1 Neelam Rani, thus, it is crystal clear that

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the petitioner Neelam Rani is 2004 born and not 2002.

The notarized copies of documents produced on record by petitioner No.1 Neelam Rani, as Ex.A12 & Ex.A13 (originals of which have not been produced by her) appears to have been manipulated and fabricated ones on the very face of it, having morphed photographs of the petitioner Neelam Rani, imprinted on the same. The undersigned tried to verify the document Ex.A12, digitally through QR Code on the same, but the same does not give coveted result viz-a-viz parentage or photograph of the student concerned.”

After hearing the counsel for the parties and considering the fact that petitioner No.1 – Neelam Rani is born on 19.06.2004 and is aged about 16½ years, this petition has been filed by concealing the correct date of birth of petitioner No.1 – Neelam Rani.

Even otherwise, petitioner No.2 is also stated to be 18 years of age.

The parties could not perform the alleged marriage on 30.11.2020, though the Granthi of Gurudwara Kalgidhar Sahib, Shanti Nagar, Ferozepur City, District Ferozepur.

Counsel for the State has relied upon the judgment **“Amnider Kaur and another vs State of Punjab and others”, 2010(1) RCR (Criminal) 261**, wherein this Court has refused to provide protection in a run-away marriage case where the girl was minor, aged about 16 years as the marriage was void. Counsel for the State has further relied upon the judgment **“Parminder Singh vs State of Haryana and others”,** passed in CRM-M No.22389 of 2020 on 24.09.2020, wherein this Court has observed as under:-

42. In the present case respondent No.3-Mohinder Singh, father of detenue Simran Kaur lodged FIR No.115 dated 26.05.2020 under Sections 363 and 366-A of the IPC

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at Police Station Chhachhrauli, District Yamuna Nagar against the petitioner. A perusal of order dated 15.07.2020 passed by learned Judicial Magistrate 1st Class, Sub Division Bilaspur shows that as per birth certificate of detenue Simran Kaur her date of birth is 01.03.2004 and detenue Simran Kaur has not attained the age of majority and was aged about 16 years and 3 months on the date of her marriage on 28.05.2020. No doubt the petitioner has been granted bail in the above-referred criminal case registered against him but in the eventuality of his conviction, his marriage would be void under Section 12 (a) of the PCM Act. Detenue Simran Kaur has a right to get her marriage declared a nullity by filing a petition through guardian or next friend along with the Child Marriage Prohibition Officer during her minority and herself on attaining of majority till she attains the age of 20 years. The petitioner will not be entitled to consummate his marriage and sexual intercourse or any sexual acts by him with detenue Simran Kaur will amount to rape under Section 375 of the IPC punishable under Section 376 of the IPC and aggravated penetrative sexual assault under Section 5 of the POCSO Act punishable under Section 6 of the POCSO Act. The petitioner being male adult aged more than 21 years is also liable to be prosecuted and punished under Section 9 of the PCM Act for offence of contracting child marriage. In these circumstances the petitioner husband is not entitled to custody of detenue Simran, minor girl child on the ground of being her guardian under Section 6(c) of the Hindu Minority and Guardianship Act, 1956 due to marriage with her and the girl child has to be kept in Child Care Institution set up for children in need of care and protection under the provisions of the JJ Act till attaining of majority by her. In these facts and circumstances of the case detenue Simran Kaur has been rightly sent by learned Sessions Judge, Yamuna Nagar vide order dated 04.06.2020 to Bal Kunj, Chhachhrauli, which is children home set up for children in need of care and protection under the provisions of the JJ Act and not a special or observation home meant for juveniles in conflict with law established under the JJ Act and application filed by the petitioner has been rightly dismissed by learned Judicial Magistrate First Class, Bilaspur vide order dated 15.07.2020 (Annexure P-5).”

It has been held by the Hon'ble Supreme Court in

“Independent Thoughts vs Union of India and another”, 2017(4)

RCR (Criminal) 595, that the provisions of the Prohibition of Child Marriage Act, 2006 be adhered to strictly.

The Hon'ble Supreme Court has also held that under Articles 14, 15 and 21 of the Constitution of India read with National Policy and National Plan, provides that a girl between the age of 15 and 18 years need protection from early marriages and to provide the girl child, a life of dignity.

The Senior Superintendent of Police, Ferozepur, has informed that FIR against the Head Granti of Gurudwara Kalgidhar Sahib, Shanti Nagar, Ferozepur City, District Ferozepur, stands registered.

Therefore, it will also be open for the Investigating Officer to investigate the case i.e. FIR No.0189 dated 04.12.2020 registered under Sections 363 and 366-A IPC at Police Station Sadar Jalalabad, District Fazilka, in accordance with law.

In view of the above, this petition is ***dismissed*** as the petitioner No.1 – Neelam Rani is aged about 16½ years and petitioner No.2 is aged about 18 years and both of them are not competent to marry each other as per the provisions of Prohibition of Child Marriage Act, 2006.

Accordingly, it is held that petitioner No.2 cannot be given the custody of petitioner No.1 – Neelam Rani and therefore, it is directed that the custody of petitioner No.1 – Neelam Rani be handed over to Gandhi Vanita Ashram, Jalandhar.

However, it will be open for the mother of petitioner No.1

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namely Soma Rani, to visit her periodically and if petitioner No.1 give consent to accompany her mother, then the statement of petitioner No.1 be recorded before the Chief Judicial Magistrate, Jalandhar, who will assess the same and if required, will hand over the custody of petitioner No.1 to her mother Soma Rani.

Needless to say that the Gandhi Vanita Ashram, Jalandhar, will take care of the studies of petitioner No.1 – Neelam Rani and will also abide by the provisions of Juvenile Justice Act, till the petitioner No.1 attains the age of majority.

A copy of this order be sent to the Senior Superintendent of Police, Ferozepur and the Gandhi Vanita Ashram, Jalandhar, for compliance.

(ARVIND SINGH SANGWAN)
JUDGE

21.12.2020

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No