

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

CRWP No.10625 of 2020 (O&M)
DATE OF DECISION: 18.12.2020

PRIYA AND ANOTHER ...Petitioners
Versus

STATE OF PUNJAB AND OTHERSRespondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Amit Sharma, Advocate for the petitioners.

ALKA SARIN, J. (Oral):

Heard through video conferencing.

The present Criminal Writ Petition has been filed under Article 226 of the Constitution of India for enforcement of fundamental rights 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 as narrated in the petition are that both the petitioners are major, the date of birth of petitioner No.1 being 22.04.2001 and that of petitioner No.2 being 17.11.2000 as per their Aadhaar Cards, copies whereof have been annexed as Annexures P-1 and P-2. The petitioners developed a liking for each other and decided to solemnize their marriage. However, this proposal of petitioner No.1 was turned down by her parents and relatives, who rather threatened the petitioner No.1 to stay away from petitioner No.2 otherwise they would solemnize her marriage with a person of their choice and started keeping her in confinement. However, both the petitioners managed to perform

their marriage on 15.12.2020. Though the petitioner No.2 has attained majority but is not of marriageable age.

Learned counsel for the petitioners contends that since respondent Nos.3 to 5 are not happy with the marriage of the petitioners, they may implicate petitioner No.2 in some false case and that the life and liberty of the petitioners and of the family members of petitioner No.2 is in danger at the hands of respondent Nos.3 to 5. The petitioners have also moved a representation dated 16.12.2020 (Annexure P-4) to the Commissioner of Police, Ludhiana (respondent No.2). However, no action has been taken thereon.

Notice of motion.

On the asking of the Court, Mr. V.G. Jauhar, Senior DAG, Punjab has joined the session through video conferencing and accepts notice on behalf of respondent Nos.1 and 2.

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 has been made aware of the fact that the date of birth of petitioner No.1 is 22.04.2001 and she is major and of marriageable age. The date of birth of petitioner No.2 is 17.11.2001. Though he is major, but he is not yet of marriageable age as envisaged in Section 5(iii) of the Hindu Marriage Act, 1955. A Division Bench of the 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, 1955. 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.”

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 Act, 1955, 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 does not mean that he can be deprived of his fundamental rights as guaranteed by the Constitution of India.

In view of the above 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 Commissioner of Police, Ludhiana (respondent No.2) is directed to decide the representation dated 16.12.2020 (Annexure P-5) and take necessary action as per law.

It is, however, made clear that this order shall neither be construed as an expression of opinion on the veracity of the contents of the present petition nor as a stamp of this Court on the validity of the alleged marriage performed by the petitioners and shall have no effect on any other civil or criminal proceedings, if any, instituted/pending against them.

Disposed off accordingly.

**(ALKA SARIN)
JUDGE**

December 18, 2020

kv

NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO

-