

CRWP-62-2021

Date of Decision: 06.01.2021.

Nitish and another

...Petitioners

vs.

State of Punjab and others

...Respondents

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Rakesh Choudhary, Advocate for
Mr. Jashan Jot Singh, Advocate for the petitioners.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.

2. Prayer in the petition under Article 226 of the Constitution of India is for the issuance of a writ in the nature of Mandamus for directing respondent Nos.2 and 3, to protect the life and liberty of the petitioners at the hands of respondent Nos.4 to 6 and for not harassing the petitioners on any false criminal complaint, lodged by respondent Nos.4 to 6 or any of their relatives.

3. Learned counsel contends that the petitioners seek protection against threats held out by respondent Nos.4 to 6 to cause harm to their life and personal liberty on account of having performed marriage on 21.12.2020, out of their own free will, without any force, fraud or coercion, and on account of their mutual liking for each other though against the wishes of respondent Nos.4 to 6. Learned counsel contends that although petitioner No.1's date of birth as per Aadhaar Card Annexure P/2 is 22.09.2001, which makes him 20 years and 3 months of

birth as per Aadhaar Card is 10.07.1999. The petitioners have also attached marriage certificate Annexure P/3 dated 21.12.2020.

5. Learned counsel contends that the petitioners have submitted representation Annexure P/4 dated 21.12.2020, to respondent No.2 i.e. Senior Superintendent of Police, Fazilka, for protection of their life and liberty but no action has been taken in respect thereto till date and that in the circumstances, they would be satisfied if the criminal writ petition is disposed of by directing respondent No.2 to consider and decide the aforementioned representation and take action on the same in accordance with law, in a time bound manner, particularly in view of the fact that although petitioner No.1 is below 21 years of age, and does not fulfill the condition stipulated under Section 5(iii) of the Hindu Marriage Act, 1955 (for short 'the Act') but in view of the decision of Hon'ble the Delhi High Court in **Jitender Kumar Sharma vs. State and another, 2010 (4) RCR (Criminal) 20**, marriage performed in violation of Section 5(iii) of the Act, 1955, is not void or invalid marriage, and in any case, the petitioners are entitled to protection of their life and liberty.

6. Notice of motion to respondent No.2 only.

7. Mr. Hittan Nehra, Addl. AG, Punjab, accepts notice on behalf of respondent No.2 and after perusal of the advance copy of the petition states that he has no objection to the limited prayer made by learned counsel for the petitioners.

8. Accordingly, in view of the decision in '**Lata Singh** vs. **State of UP and others**, JT 2006 (6) SC, 173 as also in **Jitender Kumar Sharma's** case (*supra*), but without commenting upon the age of the

petitioners, validity of their marriage under the Hindu Marriage Act, or the authenticity of the documents attached with the petition, the criminal writ petition is ***disposed of*** by directing respondent No.2 i.e. Senior Superintendent of Police, Fazilka, to consider and decide representation, Annexure P/4 dated 21.12.2020, submitted by the petitioners after taking into account all aspects of the matter, as expeditiously as possible and thereafter take such action in respect thereto in accordance with law as may be warranted keeping in view the threat perception to the petitioners. However, it is made clear that this order shall not bar any civil or criminal proceedings initiated against the petitioners in accordance with law.

(B.S. Walia)
Judge

06.01.2021

'Rajesh-PS'

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