

Harpreet Kaur and another
Vs.

.....Petitioners

State of Punjab and others

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Nitesh Singla, Advocate,
for the petitioners.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

Mr. J.S.Khiva, Advocate,
for respondent no.4.

AMOL RATTAN SINGH, J. (Oral)

On 06.01.2021, the following order had been passed by this

court:-

“Case heard by video conferencing.

By this petition, the petitioners seek protection of life and liberty at the hands of respondents no.4 to 8, upon the petitioners having married each other (as contended) against the wishes of the said respondents, on 31.12.2020.

On a specific query put to learned counsel for the petitioners, it has been stated that neither are the petitioners in any prohibited relationship to each other, nor has any of them been married earlier. He states that he has obtained specific instructions from the petitioners in that regard.

Admittedly even as per the petition, petitioner no.2, is 20 years of age, with the legally marriageable age for males being 21 years in terms of the provisions of both, the Hindu Marriage Act, 1955 and the Prohibition of Child Marriage Act, 2006.

Consequently, while protection of life and liberty is obviously a fundamental right of every citizen guaranteed under Article 21 of the Constitution of India and shall be given to the petitioners, as shall be ensured by respondents no.2 and 3, however, offences punishable under the provisions of the Act of 2006 being cognizable offences in terms of Section 15 thereof, this order shall not be treated to be any bar on proceedings initiated under the provisions of that Act; but since counsel for the petitioners is not convinced that even such proceedings should be initiated, he would address arguments in detail after studying the law thoroughly on the issue.

In view of the judgment that he wishes to cite, petitioner no.1 being protected from arrest by the provisions of that Act itself, till the next date of hearing, petitioner no.2 shall also not be arrested.

To enable a gazetted officer to file a reply to the petition, notice of motion is issued. Mr. Ramdeep Partap Singh, learned AAG, Punjab, accepts notice on behalf of respondents no.1 to 4, on the asking of the court.

The age of petitioner no.1 shall also be determined from the educational institution that she last studied/from the Registrar, Births and Deaths concerned, and proof thereof shall be annexed with the affidavit to be filed by a gazetted officer.

A copy of the petition be e-mailed to the learned State counsel by the counsel for the petitioners today itself.

Adjourned to 19.01.2021.”

Thereafter, though no process fee was filed by counsel for the petitioner, Mr. J.S.Khiva, Advocate, had appeared for respondent no.4 (with him also appearing today), i.e. the father of petitioner no.1.

A reply dated 28.01.2021 has also been filed by the State, to the effect that as regards petitioner no.1, her date of birth has been found to be 19.01.2001, with learned counsel appearing for the petitioners therefore submitting that petitioner no.1 was almost 20 years of age at the time of marriage in December, 2020.

As regards petitioner no.2, he is stated to have been born on 18.10.2001, thereby making him about 19 years of age at the time of the marriage.

It is next stated in the reply of the DSP that as per the statements recorded of respondents no.4 to 8, they have stated that they have not threatened the petitioners in any manner and therefore the representation made by the petitioners was consigned to the record room.

Today, learned counsel for the petitioners has relied upon a judgement of the Supreme Court in “**Hardev Singh vs. Harpreet Kaur and others**”, 2020 (1) RCR (CrI.) 238 (that being a different Harpreet Kaur), to submit that even though petitioner no.2 is below the legally marriageable age for males in terms of the provisions of the Prohibition of Child Marriage Act,

2006, no proceedings under the provisions of that Act can be ordered to be initiated against him as the said proceedings can only be ordered if an adult male, above 18 years of age, contracts a child marriage.

Section 9 of the Act of 2006 was referred to by the Supreme Court, which reads as follows:-

9. Punishment for male adult marrying a child.—Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both. Thereafter, it was observed as follows:-

3.2. It is not in dispute that respondent no.1 (wife of the appellant) was a major at the time of marriage. The 2006 Act does not make any provision for punishing a female adult who marries a male child. Hence, a literal interpretation of the above provisions of the 2006 Act would mean that if a male aged between the years of eighteen and twenty-one contracts marriage with a female above eighteen years of age, the female adult would not be punished, but it is the male who would be punished for contracting a child marriage, though he himself is a child.

3.3. We are of the view that such an interpretation goes against the object of the Act as borne out in its legislative history. Undoubtedly, the Act is meant to eradicate the deplorable practice of child marriage which continues to be prevalent in many parts of our society. The Statement of Objects and Reasons declares that prohibition of child marriage is a major step towards enhancing the health of both male and female children, as well as enhancing the status of women in particular. Notably, therefore, a significant motivation behind the introduction of this legislation was to curb the disproportionate adverse impact of this practice on child brides in particular”

Thereafter, the Supreme Court went on to discuss the scheme of the Act of 2006 and eventually it was held as follows:-

3.9. Our views are supported by the marginal note of Section 9, which reads “Punishment for male adult marrying a child”. It is well settled that where any ambiguity exists with regard to the interpretation of a legislative provision, the marginal note can be used in aid of construction, having regard to the object of the legislation and the mischief it seeks to remedy.

In view of the above, the words “male adult above eighteen years of age, contracts a child marriage” in Section 9 of the 2006 Act should be read as “male adult above eighteen years of age marries a child.”

4. Having regard to the above discussion, Section 9 of the 2006 Act does not apply to the present case at all. By way of abundant caution, we wish to clarify that we are not commenting on the validity of marriages entered into by a man aged between eighteen and twenty-one years and an adult woman. In such cases, the man may have the option to get his marriage annulled under Section 3 of the 2006 Act, subject to the conditions prescribed therein.

That being so, since the Supreme Court has interpreted that the provision on a male adult above 18 years of age contracting a child marriage should be read as 'male adult above 18 years of age marries a child', petitioner no.1 in the present case in any case not being a child in terms of the definition thereof in the Act of 2006, the observations made by this court in its order dated 06.01.2021, as regards there being no bar on taking cognizance of offences punishable under the provisions of Act of 2006, by the police, shall not be applicable.

It is also to be noticed that Mr.Khiva, learned counsel for respondent no.4, submits that the said respondent in fact has now no objection to the marriage of the petitioners with each other, though he submits that he would like to meet his daughter.

Obviously, with the daughter admittedly being above 20 years of age and therefore an adult, no order can be issued directing her to meet her parents, though of course it would be in the fitness of things if the daughter meets her parents, they being persons who brought her into this world and brought her up.

The petition in fact has been rendered infructuous, in view of the fact that the respondents from whom the petitioners were apprehending a threat have stated, both before the police as also before this court (through their counsel), that they have no objection to the marriage itself.

Disposed of as such.

February 10, 2021

dharamvir/

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned : YES/NO
Whether Reportable : YES/NO