

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

CRWP No.388 of 2021 (O&M)
DATE OF DECISION: 14.01.2021

Jasleen Kaur and another

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Ms. Manisha Nehra, Advocate for
Mr. Virender Singh, Advocate for the petitioners

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ALKA SARIN, J. (Oral):

Heard through video conferencing.

This is a petition under Article 226 of the Constitution of India for issuance of writ/directions to respondent Nos.2 and 3 to protect the life and liberty of the petitioners at the hands of respondent Nos.4 to 7.

Learned counsel for the petitioners would contend that both the petitioners are major in the present case, the date of birth of petitioner No.1 being 22.10.2001 as per her Aadhaar Card (Annexure P-1) and that of petitioner No.2 being 19.01.2000 as per Aadhaar Card (Annexure P-2). The petitioners, who had developed a liking for each other, wanted to solemnize their marriage. However, respondent Nos.4 to 7 wanted to perform the marriage of petitioner No.1 with a boy of their choice and they were, hence, against the relationship of the petitioners. The petitioners

ultimately solemnized their marriage on 12.01.2021 as per Hindu rites and rituals.

Learned counsel for the petitioners would further contend that after the marriage of the petitioners the respondent Nos.4 to 7 are threatening the petitioners with dire consequences. The petitioners apprehend grave danger to their life and liberty as also their implication in some false case. In this regard, representation dated 12.01.2021 has also been given to the Senior Superintendent of Police, Patiala (respondent No.2). However, no action has been taken.

Notice of motion.

On the asking of the Court, Mr. Ramandeep Sandhu, Senior Deputy Advocate General, Punjab has joined the session through video conferencing (VC) and accepts notice on behalf of respondent Nos.1 to 3. Mr. Manoj Tanwar, Advocate, who has also joined the Court proceedings through VC, accepts notice on behalf of respondent Nos.4 to 7.

Mr. Tanwar states that respondent Nos.4 to 7 are parents and brothers of petitioner No.1 and they have serious objection to the relationship of the petitioners, inasmuch as, there are criminal cases pending against petitioner No.2 as also petitioner No.1 had stolen an amount of Rs.2.5 lakhs and jewellery articles of her mother when she left the house. A complaint has also been filed by the private respondents in this regard.

I have heard the learned counsel for the parties.

In the present case, both the petitioners are major. They developed a liking for each other and solemnized their marriage on 12.01.2021. It is alleged that both the petitioners are being threatened by respondent Nos.4 to 7 and as such they apprehend danger to their life and liberty.

In the present case what needs to be considered is that there is an apprehension expressed by the petitioners of threat to their life and liberty at the hands of respondent Nos.4 to 7 which needs to be addressed, since it appears that the relationship of the petitioners is not acceptable to the private respondents.

The argument raised by learned counsel for respondent Nos.4 to 7 with regard to the allegation that petitioner No.2 has a criminal background as also that petitioner No.1 had taken away certain articles/money when she left her house to join the company of petitioner No.2, is not to be gone into in the present case. The private respondents have already filed a complaint regarding the theft which will follow its due course in law. Regarding the criminal cases pending against the petitioner no.2, that itself cannot pose a bar to the marriage of the petitioners. If petitioner No.1 has chosen a partner knowing that he has a criminal background then that would entirely be her outlook. Petitioner No.1 is an adult and can decide for herself what is good for her and what is not. The Constitution of India guarantees every individual the right to life and the choice of a partner is an important facet of the right to life.

The limited prayer in the present case is for protection of life and liberty of the petitioners as envisaged under Article 21 of the

Constitution of India. The only issue which needs to be gone into by this Court in the present petition is that the petitioners, who are major, have solemnized their marriage and decided to live their life on their own terms and they are apprehending threats to their life and liberty. The private respondents may have their apprehensions, grouses and complaints. However, regarding the same they have invoked the legal remedy available to them. Merely because of the apprehension expressed by respondent Nos.4 to 7 and the allegation that the petitioner No.1 has stolen certain articles and money from the house, the petitioners cannot be deprived of their fundamental rights as envisaged under Article 21 of the Constitution of India. The apprehensions, grouses and complaints of the private respondents would not come in the way of this Court to exercise its power for taking steps to protect the life and liberty of the petitioners while addressing the apprehension expressed by them.

This Court is also aware of the fact that the date of birth of petitioner No.1 is 22.10.2001 and she is major and of marriageable age. The date of birth of petitioner No.2 is 19.01.2000. Though he is major, but a few days short of attaining marriageable age as envisaged in Section 5(iii) of the Hindu Marriage Act. A Division Bench of the Delhi High Court in the case of “**Jitender Kumar Sharma V/s State and another**” reported as **2010(4) R.C.R. (Criminal) 20**, 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 of the petitioners or regarding the allegations of the private respondents that petitioner No.1 had stolen certain articles/money while leaving her parental home, but that the petitioners are seeking protection of their 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, though both the petitioners are major and adults, the petitioners cannot possibly be deprived of their fundamental rights as envisaged in 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 and the private respondents, the present petition is disposed off with a direction to the Senior Superintendent of Police, Patiala (respondent No.2) to decide the representation dated 12.01.2021 (Annexure P-5) and take necessary action as per law.

It is, however, made clear that any observations made above shall neither be treated as a stamp of approval by this Court qua the marriage of the petitioners nor as an opinion on the contentions raised in the present petition and also shall have no effect on any other civil or criminal proceedings, if any, instituted/pending against them.

Disposed off accordingly.

**(ALKA SARIN)
JUDGE**

14.01.2021
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<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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