

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

**CRWP-949 of 2021
Date of Decision: 08.02.2021**

Vehrag Singh and another

Petitioners

Versus

State of Punjab and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Bhawesh Chaudhary, Advocate for the petitioners.
Ms. Samina Dhir, DAG, Punjab.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

A direction is sought to Senior Superintendent of Police, Hoshiarpur and SHO, Police Station Garhdiwala, District Hoshiarpur to protect the life and liberty of the petitioners from the hands of private respondents, arrayed as respondents No. 4 to 17.

Petitioner No.1 is 20 years and Petitioner No. 2 is 16 years and 4 months of age. The petitioners want to marry each other. Petitioner No. 2 is with petitioner No. 1 as they ran away and are living together in the houses of relatives and friends of petitioner No. 1.

Learned counsel for the petitioners contends that the

petitioners are living together, they have intention to get married. The submission is that parents of petitioner No. 2 are opposed to the relationship. He places reliance on the decision of the Supreme Court in **S.Varadarajan v. State of Madras, 1965 AIR (SC 942)** to submit that petitioner No. 2 has right to give consent for going with petitioner No. 1. It is further submitted that representation dated 28.1.2021 was made to Senior Superintendent of Police, Hoshiarpur but same has not been acted upon.

Petitioner No.2 is impleaded through petitioner No. 1. On a pointed query about maintainability of petition, learned counsel for the petitioners placed reliance on the decision of the Supreme Court in **S.Varadarajan's case (supra)** to submit that petitioner No. 2 had consensually accompanied petitioner No.1.

It is not disputed that petitioner No. 2 is a minor and not of marriageable age. The relief prayed is against the relatives of petitioner No.2 but the affidavit supporting the petition is of petitioner No. 1 alone. There is nothing in the pleadings to substantiate the threat perception except for the bald statement. It is worth noting that the representation is dated 28.1.2021. There is no proof of the representation having been submitted. It is important to note that the petition itself is dated 28.1.2021.

Before proceeding further, another aspects needs to be looked into. It would be relevant at this stage to quote Sections 4(b), 6 and 13 of the Hindu Minority and Guardianship Act, 1956 (for short, 'the 1956 Act') and Section 7 of the Guardians and Wards Act,

1890 (for short, 'the 1890 Act'):

“Sections 4(b) and 6 of the 1956 Act

4. Definitions.- In this Act,--

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(b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes--

(i) a natural guardian,

(ii) a guardian appointed by the Will of the minor's father or mother,

(iii) a guardian appointed or declared by a court, and

(iv) a person empowered to act as such by or under any enactment relating to any court of wards;

6. Natural Guardians of a Hindu minor:-

The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property,) are:—

(a) in the case of a boy or an unmarried girl—the father, and after him the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother ;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father ;

(c) in the case of a married girl.— the husband :

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section:—

- (a) if he has ceased to be a Hindu, or
- (b) if he has completely and finally renounced the world by becoming a hermit (Vanaprastha) or an ascetic (Yati or Sanyasi). Explanation :—In this section, the expressions ‘father’ and ‘mother’ do not include a step-father and a step-mother.

13. Welfare of minor to be paramount consideration.—

- (1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.
- (2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

Section 7 of the Guardians and Wards Act, 1890:-

Power of the Court to make orders as to guardianship.- (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made-

- (a) Appointing a guardian of his person or property or both,
- (b) declaring a person to be such a guardian the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed

or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declare by the Court, an order under this section appointing or declaring another person to be guardian in his stand shall not be made until the powers of the guardian appointed or declare as aforesaid have ceased under the provision of this Act.

As per Section 4(b) of the 1956 Act, the guardian includes, natural guardian, appointed by the Will of the minor's father or mother, appointed or declared by a court or the person empowered to act under an enactment relating to any court of wards.

Section 6 of the 1956 Act provides that in case of a boy or an unmarried girl- the father and after him the mother, in case of an illegitimate boy or an illegitimate unmarried girl-- the mother, and after her, the father and in case of a married girl- the husband are natural guardians.

Section 13 states that while appointing guardian, welfare of minor is of utmost importance.

Section 7 of the 1890 Act empowers the Court to appoint a guardian on being satisfied for welfare of the minor.

Petitioner No. 1 does not fall within ambit of Sections 4 and 6 of the 1956 Act. The petitioners have not solemnised the marriage.

There is no material on record to even *prima facie* satisfy Court with regard to the welfare of the minor. In writ, it would not be

possible to record evidence to the effect that petitioner No. 1 is acting for the welfare of petitioner No. 2 and his interest is not adverse to the interest of the minor.

Reliance on the decision of the Supreme Court in **S.Varadarajan's case (supra)** does not enhance case of the petitioner. In a criminal appeal against the conviction of the appellant under Section 363 IPC the Apex Court dealt with the distinction between “taking” and “enticing”. The decision is of no help in the facts of the present case.

No case is made out for invoking the writ jurisdiction.

The petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

8th February, 2021

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1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes