

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

CRWP-3683-2021

Date of Decision: April 16, 2021

Manita Devi and another

...Petitioners

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.A.P.Kaushal, Advocate
for the petitioners.

ARCHANA PURI, J.

The matter has been taken up through video conferencing in the light of COVID-19 pandemic.

Through the present petition, the petitioners have made prayer for seeking protection, as threat is extended to them, at the behest of private respondents No.4 to 10, as both the petitioners have solemnized marriage against their wishes.

Notice of motion.

Ms.Monika Jalota, AAG, Punjab, accepts notice on behalf of official respondents.

In the petition, it is averred that date of birth of petitioner No.1 is 25.05.1999 and she is 21 years of age. The date of birth of petitioner No.2 is 23.08.2001 and he is about 20 years of age. Further, it is submitted that both the petitioners fell in love with each other and decided to marry.

When they disclosed about their wish to solemnize marriage to their family

members, it was objected by private respondents. However, petitioners have solemnized marriage on 09.04.2021 according to Hindu rites and ceremonies. Even, photographs relating to the performance of marriage ceremonies have been annexed with the petition. After marriage, they are residing together as husband and wife. However, marriage of the petitioners is not acceptable to the family members of petitioner No.1 and now, the petitioners apprehend danger to their lives and personal liberty at the hands of respondents No.4 to 10. Also, it is submitted by learned counsel for the petitioners that representation dated 10.04.2021, copy whereof is Annexure P-5, had been sent to Senior Superintendent of Police, Kapurthala-respondent No.2, for extending protection to their lives and liberty but no action has been initiated upon the same.

On the other hand, learned State counsel has pointed out that petitioner No.2 Randeep Singh, is though major, but he is not of marriageable age. As such, it is submitted that no protection can be extended to the petitioners. However, learned State counsel has further assured that if so directed, then appropriate action on the representation (Annexure P-5) can be taken.

Very true, as so pointed out by learned State counsel that petitioner No.2-Randeep Singh, whose date of birth is 23.08.2001, is though major, but not of marriageable age but however, the controversy that needs adjudication now is whether appropriate writ/direction or order is warranted to allay the apprehensions of the petitioners for granting protection to them for enforcement of their fundamental rights under Article 21 of the Constitution of India. In this regard, suffice to make reference to the

Rajveer Kaur and another vs. State of Punjab, CWP-17025-2019, decided on 21.06.2019, wherein, while adjudicating with the question relating to the girl and boy, who were not of marriageable age, it was observed as herein given:-

“14. A perusal of Section 5, ibid leaves no manner of doubt that one of the essential conditions of Hindu Marriage Act is that the bridegroom must be above 21 years and the bride above 18 years. However, at the same time, Section 11 of the Hindu Marriage Act which declares certain marriages, which are in contravention of Section 5 (supra), to be void, but precludes a marriage solemnized in contravention of Sub Section (iii) of Section 5, ibid from the purview of being regarded as void or invalid.”

Furthermore, in the aforesaid decision, reliance was also placed upon the Division Bench judgment rendered by Delhi High Court, in case titled as ***Jitender Kumar Sharma Vs. State and Another, reported as 2001 (7) AD (Delhi) 785***. The relevant observations reads as herein given:-

“It is true that one of the conditions of a hindu marriage is that the bride should have completed 18 years age and the bridegroom, 21 years. But, does this mean that a marriage where this twin condition as to ages is not satisfied is, ipso facto, invalid or void? An examination of Section 11 of the HMA would seem to suggest otherwise. The said provision is as under:-

11.Void marriages- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5. Though five conditions have been stipulated in Section 5, only the contravention of three of them, namely, clauses (i) (iv) and (v) would render the marriage to be null and void. Clause (iii) of section 5, which is the condition with regard to the minimum ages of the bride and bridegroom, is conspicuous by its absence. As a result, a hindu marriage solemnized in contravention of clause (iii) of section 5 of the HMA cannot be regarded as a void or invalid marriage. We are not oblivious of section 18 of the HMA which prescribes punishment for contravention of certain conditions for a hindu marriage. It reads as under:-

18. Punishment for contravention of certain other conditions for Hindu marriage.- Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv) and (v) of Section 5 shall be punishable-

a) in the case of contravention of the condition specified in clause (iii) of Section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both;

b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of Section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

*c) (***) But, the fact that punishment has been provided for contravention of the condition specified in section 5 (iii) of the HMA does not mean that the marriage itself is void or invalid. If the legislature had intended that such a marriage would be void or invalid, it could have easily included clause (iii) of section 5 in Section 11 itself. Only clauses (i), (iv) and (v) of section 5 are specifically mentioned in section 11. The only conclusion is that the legislature consciously left out marriages in contravention of the age stipulation in clause (iii) of section 5 from the category of void or invalid marriages.*

xxx----xxx-----xxx----xxx Before we proceed further, under Hindu law there are essentially two kinds of marriages-void marriages or valid marriages. The latter category has a sub-category of voidable marriages. A marriage in contravention of clause (iii) of section 5, as we have seen above, does not fall in the category of void marriages specified in section 11 of the HMA nor does it fall in the category of voidable marriages specified in section 12. Consequently, by the process of elimination, it would be a valid marriage. Of course, the marriage may be dissolved through a decree of divorce, but, that would have to be on the grounds specified in section 13 of the HMA. Interestingly, section 13 (2) (iv) enables a 'wife' to petition for dissolution of her marriage on the ground:-

(iv)that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years. What does this show? It shows that even a marriage of a minor girl below the age of fifteen is regarded as valid and can only be dissolved on her petition, provided she repudiates the marriage between the time she is 15 years old and 18 years old."

In the light of aforesaid decision in Rajveer Kaur's case (supra), it was further observed as herein given:-

16. Reverting to the present case, in light of the aforesaid background and the judgment rendered by Delhi High Court, it appears from the documents appended herein that the petitioners have not solemnized a valid marriage as per Sub Section (iii) of Section 5 of the Hindu Marriage Act and may be required to satisfy the validity of their marriage before an appropriate Forum in the event of same being put to challenge.

17. The issue in hand, however, is not marriage of the petitioners, but the deprivation of fundamental right of seeking protection of life and liberty. I have no hesitation to hold that Constitutional Fundamental Right under Article 21 of Constitution of India stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.

18. It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. The mere fact that the petitioners are not of marriageable age in the present case would not deprive them of their fundamental right as envisaged in Constitution of India, being citizens of India.

On the basis of the observations aforesaid, requisite direction was given to the concerned SSP to verify about the contents of the petition, particularly the threat perception of the petitioners and thereafter provide necessary protection qua their life and liberty, if deemed fit.

Now, adverting to the case in hand, suffice to make mention that requisite protection, as such, can be extended to the petitioners, if need be, even though, petitioner No.2 is not of marriageable age.

In view of the assurance given by learned State counsel to pass appropriate orders relating to the representation so made, copy whereof is

Annexure P-5, the present petition is disposed of with the direction to

respondents No.2 and 3 to look into the matter and to consider the representation (Annexure P-5) and if they find that there is genuine apprehension of danger to the lives and personal liberty of the petitioners, then they are directed to take appropriate steps to ensure their protection, in the fitness of the circumstances.

However, these observations are circumscribed, only for the purposes of disposal of the present petition, without prejudice to the rights of the parties, to be adjudicated in any civil or criminal proceedings, qua their age, factum of marriage and the validity thereof.

(ARCHANA PURI)
JUDGE

April 16, 2021
Vgulati

Whether speaking/reasoned	Yes
Whether reportable	Yes/No