

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

FAO No. 529 of 2021
Date of decision 06.07.2021

Som Nath ...Appellant No. 1
AND
Kanchan Rani ...Appellant No. 2

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE ARCHANA PURI**

Present: Mr. H.S. Dhindsa, Advocate,
for the appellant.

Ritu Bahri, J. (Oral)

The present appeal is directed against judgment dated 01.03.2021, passed by learned Principal Judge, Family Court, Ludhiana whereby petition under Section 13-B of the Hindu Marriage Act, filed by appellant and respondent, has been dismissed.

Brief facts of the case are that the marriage of appellant was performed on 16.04.2003 with the respondent-Kanchan Rani. One girl child namely Siddi was born out of this wedlock on 15.08.2011. Thereafter, on account of indifferent temperaments and misunderstandings, the appellant and respondent started living separately from 01.03.2019 from each other.

Learned counsel for the appellant contends that impugned order dated 01.03.2021 has wrongly been passed on the sole ground that as per Section 5 (iii) of the Hindu Marriage Act, the marriage of the parties was not valid, as the the wife of the appellant was minor at the time of marriage.

Learned counsel for the appellant submits that first statement of the parties has already been recorded on 10.08.2020 (Ex PW1/A and Ex PW2/A) and second statement on 23.02.2021 (Ex PW1/B and Ex PW2/B) .

Learned counsel contends that as per Section 5 (iii) of the Hindu Marriage Act, 1955 read with Sections 11 and 12 of the Hindu Marriage Act if the spouse had not attained the age of majority at the time of marriage, the same cannot be made a ground for void marriage or voidable marriage.

Learned counsel for the appellant has referred to the judgment of this Court in a case of ***Pinki Rani vs. Bittu Ram, 2014 (1) RCR (Civil) 1051*** whereby Division Bench has held that the infringement of the provisions of Section 5 (iii) of the Hindu Marriage Act does not make the marriage voidable in terms of Section 12 of the Hindu Marriage Act.

Heard.

Reference at this stage can be made to Section 5 (iii) and Sections 11 & 12 of the Hindu Marriage Act, which reads as under:-

“5. Conditions for a Hindu marriage.--A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely :--

(i) neither party has a spouse living at the time of the marriage;

(ii) at the time of the marriage, neither party--

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty-

one years and the bride the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

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.

12. Voidable marriages:- (i) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force [or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage —(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if—

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been

discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied—

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [the said ground].

Thus, the right, if any, to get the marriage annulled was with the respondent-wife within two years from attaining majority and not now after so many years. For all intents and purposes, the husband being major would be the guardian of the minor wife.

Reference at this stage can further be made to judgment of Delhi High Court in a case of ***Sh. Jitender Kumar Sharma vs. State and another, 2010 (4) R.C.R (Civil) 59*** wherein a boy aged 18 years and girl aged 16 years married and it was held that marriage is not void though it is in contravention of Section 5 (iii) of the Hindu Marriage Act. The natural guardian of girl was held to be no longer her father but husband and custody was given to the husband. In para No. 22 and 23, it has been observed as under:-

“22. A reading of the 1890 Act and the 1956 Act, together, reveals the guiding principles which ought to be kept in mind when considering the question of custody of a minor hindu. We have seen that the natural guardian of a minor hindu girl whose is married, is her husband. We have also seen that no minor can be the guardian of the person of another minor except his own wife or child. Furthermore, that no guardian of the person of a minor married female can be appointed where her husband is not, in the opinion of the court, unfit to be the guardian of her person. The preferences of a minor who is old enough to make an intelligent preference

ought to be considered by the court. Most importantly, the welfare of the minor is to be the paramount consideration. In fact, insofar as the custody of a minor is concerned, the courts have consistently emphasized that the prime and often the sole consideration or guiding principle is the welfare of the minor [See: [Anjali Kapoor v. Rajiv Baijal](#): (2009) 7 SCC 322 at 326].

*23. In the present case, Poonam is a minor Hindu girl who is married. Her natural guardian is no longer her father but her husband. A husband who is a minor can be the guardian of his minor wife. No other person can be appointed as the guardian of Poonam, unless we find that Jitender is unfit to act as her guardian for reasons other than his minority. We also have to give due weight and consideration to the preference indicated by Poonam. She has refused to live with her parents and has categorically expressed her desire and wish to live with her husband, Jitender. Coming to Poonam's welfare which is of paramount importance, we are of the view that her welfare would be best served if she were to live with her husband. She would get the love and affection of her husband. She would have the support of her in-laws who, as we have mentioned earlier, welcomed her. She cannot be forced or compelled to continue to reside at Nirmal Chhaya or some other such institution as that would amount to her detention against her will and would be violative of her rights guaranteed under [article 21](#) of the Constitution. **Neetu Singh's case (supra)** is a precedent for this. Sending her to live with her parents is not an option as she fears for her life and liberty.*

Applying the ratio of the law laid down in the above mentioned judgments, the present appeal is allowed and judgment dated 01.03.2021 is set aside. A direction is given to Family Court, Ludhiana to pass appropriate order in the petition under Section 13-B of the Hindu Marriage Act.

(RITU BAHRI)
JUDGE

(ARCHANA PURI)
JUDGE

06.07.2021

G Arora