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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No.5102 of 2021 (O&M)

Date of Decision: 04.06.2021

Baljinder Kumar and another

....Petitioners

VERSUS

State of Punjab and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present: Ms. Puja Chopra, Advocate for the petitioners.

ALKA SARIN, J.

Heard through video conferencing.

This is a petition under Articles 226/227 of the Constitution of India seeking protection of life and liberty of the petitioners at the hands of respondent Nos.4 to 7.

Learned counsel for the petitioners has contended that petitioner No.1 is a major aged 23 years and as per his Aadhaar Card (Annexure P-1) his date of birth is 29.04.1998. The date of birth of petitioner No.2 as per her Birth Certificate (Annexure P-2) is 14.12.2002. However, it has been stated that the names of parents of petitioner No.2 mentioned in the Birth Certificate are Lala Ram and Pinki, who are the biological parents of petitioner No.2 whom she has never seen. It is submitted that in the Aadhaar Card of petitioner No.2 (Annexure P-3) her date of birth has been got mentioned as 08.03.2004 by her adoptive parents. It is further the contention of learned counsel for the petitioners that the petitioners had developed a liking for each other and wanted to get married. However, respondent No.5, mother of petitioner No.2, got enraged and furious and that is when she told petitioner No.2 that she is an adopted child and she was also shown her

original Birth Certificate. It has further been averred that on 27.05.2021 the petitioners solemnized their marriage according to Hindu Rites and Ceremonies at Prachin Shiv Mandir, Near Kaushalaya River Bridge, Pinjore.

It has further been averred that the petitioners are now receiving threats from respondent Nos.4 to 7. In this regard, the petitioners had also given a representation dated 31.05.2021 (Annexure P-5) to respondent No.2 for providing adequate security. However, no action has been taken till date. Learned counsel for the petitioners further contends that, at this stage, she limits her prayer in the present petition and would be satisfied at this stage if directions are issued to respondent No.2 to decide the representation (Annexure P-5) in accordance with law.

Notice of motion.

On the asking of the Court, Mr. Hittan Nehra, Addl. AG Punjab, who has joined the session through video conferencing, accepts notice on behalf of respondent Nos.1 to 3. Since the matter is not being decided on merits, the service on other respondents is dispensed with.

Heard learned counsel for the parties.

In the present petition this Court, without expressing any opinion on the validity of the marriage of the petitioners, needs to consider as to whether the apprehension of the petitioners needs to be addressed.

This Court has taken a note of the fact that the girl in the instant case i.e. petitioner No.2 is aged 17 years and petitioner No.1 is aged 23 years. Petitioner No.2 is not of marriageable age as per her Aadhaar Card (Annexure P-3). The Birth Certificate which has been appended with the present petition as Annexure P-2 cannot be looked into by this Court as there is nothing linking petitioner No.2 to the said Birth Certificate. Except for

the bald statement made in the petition that the said Birth Certificate is of the petitioner No.2, there is nothing on record connecting her with the parents mentioned in the said Birth Certificate. This leaves the Court with only the Aadhaar Card (Annexure P-3) of petitioner No.2 as per which she is not of marriageable age as envisaged in Section 5(iii) of the Hindu Marriage Act, 1955. The name of the father of petitioner No.2 as mentioned in the Aadhaar Card (Annexure P-3) and in the petition is the same.

In a case having similar facts, a Division Bench of the Delhi High Court in the case of **“Jitender Kumar Sharma V/s State and another”** **reported as 2010 SCC Online Delhi 2705**, dealt with the complex issue regarding the marriage between two people ineligible to be married as envisaged in 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.”

Further in the said case, the Division Bench also considered the question of custody of the minor girl and after detailed discussion, the Division Bench has held as follows:-

“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.”

In the present case, though the issue in hand is not with regard to the validity of the marriage, 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 her or his life and personal liberty except as per the procedure established by law. In the present case, petitioner No.2 is a minor as per her Aadhaar Card (Annexure P-3). 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, she cannot possibly be deprived of her fundamental rights as envisaged in the Constitution of India.

In view of the discussion 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, the present petition is disposed off with a direction to the Senior Superintendent of Police, Hoshiarpur (respondent No.2) to decide the representation of the petitioners dated 31.05.2021 (Annexure P-5) and take necessary action as per law.

It is, however, made clear that this order shall not, in any manner, be construed as an expression of opinion on the veracity of the statement made by the petitioners or on the validity of the marriage and shall have no effect on any other civil or criminal proceedings, if any, instituted/pending against them.

Disposed off.

(ALKA SARIN)
JUDGE

04.06.2021
Yogesh Sharma

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO