

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 18426 of 2020

Date of Decision: 05.4.2021

Vikas Tomar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Naresh Kumar Chhokar, Advocate
for the petitioner.

Mr. Ashok Singh Chaudhary, Addl. A.G., Haryana.

None for respondent No. 2.

HARNARESH SINGH GILL, J. (ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of FIR No. 49 dated 1.3.2020 registered under Section 346 IPC and later on added Sections 363, 366 IPC, Police Station Sanauli, District Panipat (Annexure P-1) and all the consequential proceedings arising therefrom.

As per office report, respondent No. 2 has been served but no one has put in appearance on his behalf.

Learned counsel for the petitioner submits that the petitioner had solemnized marriage with respondent No. 3-Gulista on 20.3.2020 and the marriage certificate has been annexed as Annexure P-2. He further submits that as per the affidavit of respondent No. 3-Gulista (Annexure P-4) dated 20.6.2020, she herself fled away with the petitioner and thereafter performed marriage willingly. Learned counsel has placed reliance on the judgment passed by a Co-ordinate Bench of this Court in **CRM-M-20909-2014**, titled **Madan Lal and others versus State of Punjab and another**

decided on 14.9.2015 and **Jitender Kumar Sharma versus State and**

another 2010 (4) RCR (Criminal) 20.

Learned State counsel submits that respondent No. 3-Gulista has got recorded her statement under Section 164 Cr.P.C., before Sub Divisional Judicial Magistrate, Panipat on 4.8.2020, in which she stated that she has performed marriage with Vikas (petitioner) and has been residing with him.

I have heard the learned counsel for the parties.

On 13.7.2020, the State sought time to record the statement of the wife of the petitioner (respondent No. 3) to ascertain whether she had willingly solemnized the marriage with the petitioner and whether she was living with the petitioner on her own accord and the case was adjourned for 22.7.2020.

Pursuant to the order dated 13.7.2020, the statement of respondent No. 3-Gulista under Section 161 Cr.P.C. was recorded by Deputy Superintendent of Police, Crime Against Women, Panipat on 14.7.2020, wherein she specifically stated that she has been residing with the petitioner who is her husband.

On 22.7.2020, it was informed that the statement of the wife of the petitioner-respondent No. 3 under Section 164 Cr.P.C. was not recorded and the case was adjourned to 18.8.2020.

Pursuant to the order dated 22.7.2020, statement of respondent No. 3-Gulista under Section 164 Cr.P.C., was got recorded before Sub Divisional Judicial Magistrate, Panipat on 4.8.2020, in which she stated that she has performed marriage with Vikas (petitioner) and has been residing with him.

Respondent No. 3-Gulista was alleged to be minor at the time

of performing marriage but the fact remains that she has performed marriage with the petitioner with her own free will. Even though the girl at the time of marriage was a minor and under the Guardians and Wards Act, 1890, though the parents are the legitimate legal guardians and since it is a marriage which is voidable in terms of Hindu Marriage Act, 1955 but since the couple has chosen their life partners against the wishes of their parents and are carrying on this relationship living together, this Court can take the cognizance of the fact as per Section 25 of the Guardians and Wards Act, 1890, as the welfare of the ward is of paramount importance, which cannot be ignored. It is not disputed that respondent No. 3 has solemnized marriage with the petitioner and their marriage certificate has also been placed on record as Annexure P-2. Thus, the petitioner being the husband is in relationship with respondent No. 3 and in terms of Sections 19 and 21 of the Guardians and Wards Act read with Sections 6, 10 and 13 of the Hindu Minority and Guardianship Act, 1956 has a right to hold as the natural guardian of the minor Hindu girl who is married to him which as per the statute is the girl's husband. Thus, it cannot be said that there is any element of taking away or enticing her. Moreover, while looking from another angle, it is admitted case that the petitioner and respondent No. 3 are residing together.

To the mind of this Court, constitutional rights of protection of life and liberty is granted under Article 21 of the Constitution of India.

In the case titled as '***Jitender Kumar Sharma versus State and another, WP (CRL) 1003/2010***', decided on 11.8.2010 by the Division Bench of Delhi High Court, the couple was minor and had performed marriage against the wishes of the parents of girl Poonam, who was aged 16

years whereas Jitender was 18 years of age. It would be relevant to reproduce relevant paras of the said judgment, which read 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.

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.”

Accordingly, in **Jitender Kumar Sharma's** case (supra), two FIRs i.e. FIR under Section 363/376 IPC and FIR under Sections 363/506 IPC, were quashed.

As per proposition of law laid down in **State of Haryana and others versus Ch. Bhajan Lal and others, 1992 AIR 604**, powers under Section 482 Cr.P.C. can be exercised in exceptional circumstances.

The FIR in question was got registered on the statement of Dilshad-respondent No. 2, who is the father of respondent No. 3-Gulista. Since respondent No. 2-complainant, has not appeared before this Court, despite service, it indicates that he has nothing to say in this case. Since respondent No. 3-Gulista has performed marriage with the petitioner of her own will and has been residing happily with him at her matrimonial home, no useful purpose would be served in allowing the criminal proceedings to continue.

Accordingly, this petition is allowed. FIR No. 49 dated 1.3.2020 registered under Section 346 IPC and later on added Sections 363, 366 IPC, Police Station Sanauli, District Panipat (Annexure P-1) and all the consequential proceedings, arising therefrom, are quashed qua the petitioner.

(HARNARESH SINGH GILL)
JUDGE

April 05, 2021
Gurpreet