

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRWP-7409 of 2021

Date of Decision: 1.12.2021

Husan Bano and another

.... Petitioners

Vs.

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mohd. Salim, Advocate,
for the petitioners
Mr.Rana Harjasdeep Singh, DAG, Punjab
...

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

By this petition, the petitioners seek protection of life and liberty at the hands of respondents no. 4 to 6, who are stated to be the relatives of petitioner no.1, upon them having married each other (as contended) against the wishes of the said respondents, on 28.7.2021.

As noticed in the order dated 11.10.2021, learned counsel for the petitioners had referred to 7 orders/judgments of this court, as also one of a Division Bench of the Delhi High Court, with him submitting that even if petitioner no.2 is of less than marriageable age as per Sections 2(a) and 10 of the Prohibition of Child Marriage Act, 2006, the petitioners are still entitled to protection of life and liberty.

He refers to the following judgments in that regard:-

1. Yunus Khan versus State of Haryana and others, 2014

(3) R.C.R. (Criminal) 518;

2. *Shoukat Hussain Vs. State of Punjab (P&H) : 2021(1) Law Herald 562;*
3. *Sameena Bibi and another Vs. State of Punjab and others (CRWP-8331-2021);*
4. *Tahra Begum Vs. State of Delhi and others, 2013(1) R.C.R. (Civil) 798;*
5. *Mohd. Samim Vs. State of Haryana and others, 2019(1) R.C.R. (Criminal) 685;*
6. *Kammu Vs. State of Haryana and others, 2010(4) R.C.R. (Civil) 716;*
7. *Lovepreet Kaur and another Vs. State of Punjab and others (CRWP-9392-2021).*

In fact, there is absolutely no quarrel with that contention because every citizen is entitled to protection of life and liberty as a basic fundamental right enshrined in Article 21 of the Constitution of India.

However, such liberty is always circumscribed by the provisions of law, and thus if any cognizable offence is found to be made out, naturally the police can take cognizance of such offence and proceed with the matter accordingly, while otherwise ensuring protection of the life of the persons concerned.

In the present case, learned counsel for the petitioners points to an ossification test stated to have been undergone by petitioner no.1, Husan Bano, on 2.8.2021 (Annexure P-1), showing her 'bone age' to be 22 years.

It is a well settled proposition that an ossification test cannot

be taken to be an accurate measure of a persons' chronological age, with there being a margin of two years (plus or minus) from the age shown in such test.

Thus, as per the ossification test, even if her age is to be deducted by two years from what is shown in the said test (shown to be conducted by a private clinic), she would be taken to be 18 years of age, which is obviously the marriageable age for females even in terms of the aforesaid Act of 2006.

However, learned State counsel points to the school certificate obtained by the respondent-State from the Principal of the Government Higher Secondary School, Nagri, Parol, (District Kathua, J&K, copy Annexure R-4), as per which the date of birth of petitioner no.1 is shown to be 2.4.2004, with the date of marriage between the petitioners shown to be 28.7.2021 as per paragraph 4 of the petition itself.

Thus, as per the said certificate, her date of birth would come to be 17 years and about 3-1/2 months on the date of the marriage, thereby making her less than 18 years of age.

As regards petitioner no.2, in any case he is shown to be below the legally marriageable age for males in terms of the aforesaid Act, he having been shown to be 19 years of age, but in fact with his age determined by the respondent-State from his school certificate, showing that he was born on 20.3.2005, thereby making him only 16 years and 4 months of age as on the date of the marriage.

That being so, though learned counsel submits that the

petitioners being Muslims would be governed by Muslim Personal Law which allows any person above the age of puberty to get married, he has not been able to show, even today, any provision in the Prohibition of Child Marriage Act, 2006, which carves out a distinction in favour of any community, by which any member of such community can get married at an age below the legally marriageable age as prescribed under the provisions of the said Act.

Though Mr. Salim has referred to various judgments of this court, as also of the Delhi High Court, from none of those judgments has he been able to show that Section 15 of the Prohibition of Child Marriage Act, 2006 was duly discussed, which lays down that all offences punishable under the provisions of that Act are cognizable offences.

In that regard, it is necessary to bring out the following provisions of the said Act:-

*“Section 2. **Definitions.**- In this Act, unless the context otherwise requires,-*

(a) “child” means a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age;

(b) “child marriage” means a marriage to which either of the contracting parties is a child;

xx xx xx

(f) “minor” means a person who, under the provisions of the Majority Act, 1875 (9 of 1875) is to be deemed not to have

attained his majority.

Section 10. Punishment for solemnising a child marriage.-

Whoever performs, conducts or directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

Section 15. Offences to be cognizable and non-bailable.-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be cognizable and non-bailable.”

As regards the judgment of this very bench relied upon by learned counsel for the petitioners in Yunus Khans' case (supra), the issue that was discussed therein in detail was with regard to whether the custody of a minor Muslim girl should be given to her husband or to her father after marriage, which this court having held that unless enticement could be proved, such custody would lie with the husband, though no comment was made with regard to Section 15 of the Prohibition of Child Marriage Act, 2006, and consequently this court (this very bench), has obviously absolutely missed that provision completely in the said judgment and to that extent even that judgment would be rendered per-incuriam.

Even keeping in view the above facts and observations, this petition is disposed of with a direction to the official respondents to ensure

that the life and liberty of the petitioners is duly protected as per law; but with it made absolutely clear that this order would not bar proceedings under the Prohibition of Child Marriage Act, 2006, all offences committed under that Act being cognizable in terms of Section 15 thereof.

As regards the proceedings instituted in District Kathua, J&K, as have been pointed to by learned State counsel, learned counsel for the petitioners in fact very fairly submits that as regards the FIR registered there, he is not making any prayer before this court and the petitioners would resort to their remedy qua that FIR, as per law, before the competent court in J&K.

1.12.2021
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
No/Yes