

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

FAO-900-2021

Date of decision: 18.11.2021

Raj Kumar

... Appellant

Versus

Savita Rani @ Sweety

... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Karan Garg, Advocate, for the appellant.

Mr. Naveen Madhan, Advocate, for the respondent.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The appellant has filed the present appeal against the judgment
and decree dated 25.3.2021 passed by Principal Judge, Family Court,
Ludhiana whereby the joint petition filed by the parties under Section 13-B
of Hindu Marriage Act for grant of divorce by way of mutual consent, was
dismissed.

Brief facts of the case are that the marriage between the parties
was solemnized on 4.4.2003 as per Hindu rites and ceremonies. At the time
of marriage, i.e., on 4.4.2003, respondent-Savita Rani @ Sweety was more
than 18 years of age. However, the appellant was less than 21 years of age.
Out of the aforesaid wedlock, one male child namely Jatinder Garg now
aged about 15 years and one female child namely Anamika, now aged about
12 years were born. Both the children are presently living under the care and

PARITOSH KUMAR custody of appellant-Raj Kumar. Both the parties continued to live together
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I attest to the accuracy of
this order

and have cohabited as husband and wife till 24.7.2018. Finally, they decided to part ways and filed joint petition under Section 13-B of Hindu Marriage Act. In the said joint petition, it was specifically pleaded that the parties have effected compromise, as per which, ₹ 2 lakhs are to be paid by the husband to the wife at the time of recording of statements of first motion and the balance amount of ₹ 1 lakh at the time of recording of statements of second motion. The gold jewellery weighing 64 grams is to be handed over to the wife by the husband at the time of recording of statements of first motion. It was also agreed that the criminal cases and other cases of maintenance initiated by the wife would be withdrawn by her.

In the light of the aforesaid compromise, both the parties got recorded their statements relating to first as well as second motion and they were ready to get divorce by way of mutual consent. However, Principal Judge, Family Court, Ludhiana dismissed their joint petition under Section 13-B of Hindu Marriage Act on the ground that it was not a valid marriage as the husband was less than 21 years of age as on 4.4.2003 when the marriage between the parties was solemnized.

Being aggrieved, the appellant has filed the present appeal. On notice of motion, Mr. Naveen Madhan, Advocate has appeared on behalf of the respondent and pleaded no objection if the present appeal is allowed and impugned judgment and decree are set aside and the petition filed under Section 13-B of Hindu Marriage Act is allowed.

We have heard learned counsel for the parties.

The relevant provisions of Section 3 of Prohibition of Child Marriage Act, 2006 reads as follows : -

contracting party being a child.--(1) Every child marriage, whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

(4) X X X X”

Now adverting to the facts of the present case, admittedly, the marriage between the parties was solemnized on 4.4.2003 and at that time, the appellant was less than 21 years of age. The marriage between the parties being child marriage was voidable at the option of the husband who was a child at the time of the marriage. Undisputedly, the husband never filed any petition for annulling the said child marriage within the stipulated period provided under Section 3 of Prohibition of Child Marriage Act, 2006. It being so, for all intents and purposes, the marriage between the parties is to be considered as valid marriage at the time when they filed joint petition under Section 13-B of Hindu Marriage Act. So, the view taken by

the Family Court that the petition filed under Section 13-B of Hindu Marriage Act deserves to be declined, as the marriage between the parties was not valid marriage, is totally misplaced and is untenable. In this context, reference be made to the decision of this Court dated 26.8.2021 passed in FAO-855-2021; **Yogesh Kumar v. Priya** wherein also in similar circumstances, the appeal filed by the aggrieved party was allowed by Division Bench of this Court and the decree of divorce under Section 13-B of Hindu Marriage Act was granted.

In the present case, the Family Court had recorded statements of the parties regarding mutual consent for grant of divorce under Section 13-B of Hindu Marriage Act. The first motion statements were recorded on 31.8.2020 and the second motion statements were recorded on 15.3.2021, meaning thereby, that the second motion statements of the parties were recorded after more than 6 months of recording of their first motion statements. It is also evident that the parties were already living separately for a period of more than one year at the time of filing of the joint petition under Section 13-B of Hindu Marriage Act.

In the light of the above, this appeal is allowed and judgment and decree dated 25.3.2021 passed by Principal Judge, Family Court, Ludhiana are set aside and decree of divorce under Section 13-B of Hindu Marriage Act is granted to the parties. Decree sheet be drawn accordingly.

(**RITU BAHRI**)
JUDGE

(**KARAMJIT SINGH**)
JUDGE

November 18, 2021

Paritosh Kumar

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No