

CRM-M-32912-2020

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

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Date of decision: 01.04.2021

Ajay Kumar

...Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Suresh Kumar Kaushik, Advocate,
for the petitioner.

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

Mr. Dharamvir Sharma, Advocate,
for respondent No.3.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

Through this petition, the petitioner seeks quashing of FIR No.107 dated 09.6.2020 under Section 9 of Prohibition of Child Marriage Act, 2006 (initially registered under Sections 363 and 366 IPC), registered at Police Station Siwan, District Kaithal (Annexure P-3) and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioner contends that respondent No.2 got the above-noted FIR registered on 09.06.2020. In fact, the petitioner and respondent No.3 developed liking for each other and underwent marriage with each other on 07.06.2020 against the wishes of the parents of the latter regarding which they had sought protection of life

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and liberty from this Court by way of filing CRWP-3593-2020, which stood disposed of vide order dated 10.06.2020, with a direction to the Superintendent of Police, Kaithal, to look into the threat perception to them and take appropriate measures, if so required. Thereafter, the petitioner and respondent No.3 had again filed CRWP-5930-2020, seeking protection to their life and liberty. In that petition, status report annexing the statement got recorded by respondent No.2, had been filed. In her said statement, respondent No.2 stated that they had no objection to the marriage performed by their daughter with Ajay and they had no concern with the said act and their daughter could live according to her own will. Learned counsel further contends that the petitioner and respondent No.3 have been living together happily as husband and wife since the date of solemnization of their marriage, and considering the said fact, this Court, vide order dated 15.10.2020, had ordered that no coercive action shall be taken against the petitioner.

On the other hand, learned State counsel opposes the prayer made in the present petition.

Learned counsel for respondent No.3 does not dispute the fact that the petitioner and respondent No.3 have been living together as husband and wife since the date of solemnization of their marriage.

I have heard the learned counsel for the parties.

The short reply dated 26.01.2021 filed by way of affidavit of the Deputy Superintendent of Police, Guhla, is read to submit that the petitioner and respondent No.3 joined the investigation and her statements under Sections 161 and 164 Cr.P.C. had been recorded. She was also

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produced before the Child Welfare Committee, for counselling and the Medical Officer, CHC Guhla, for medico-legal examination, but she had refused to get herself medico-legally examined. In her statements under Sections 161 and 164 Cr.P.C., she has specifically stated that she performed the marriage with Ajay on 07.06.2020 and she wanted to live with him.

For the sake of arguments, if it is assumed that respondent No.3 is a minor, even then under the Guardians and Wards Act, 1890, the parents are the legitimate guardians. Though the marriage of a minor is a voidable marriage in terms of Section 5 of the Hindu Marriage Act, 1955, yet the fact remains that the couple has chosen their life partner. In that eventuality, Section 25 of the Guardians and Wards Act, 1890, stipulates that the welfare of the ward is of paramount importance, which cannot be ignored. Even for the sake of repetition, it will not be out of place to mention here that both of them developed liking for each other and underwent marriage with each other against the wishes of their parents. Thus, it cannot be said that there is any element of taking away or enticing her.

In the case titled as '*Jitender Kumar Sharma versus State and another, WP (CRL) 1003/2010*', decided on 11.8.2010 by a 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

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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 the 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.

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In the above-noted FIR got registered on the complaint of respondent No.2, age of respondent No.3 is stated to be around 18-year. Keeping in view the fact that after solemnization of marriage, the petitioner and respondent No.3 are residing together as husband and wife, this Court finds that no useful purpose would be served in allowing the criminal proceedings to continue.

Accordingly, the present petition is allowed. FIR No.107 dated 09.6.2020 under Section 9 of Prohibition of Child Marriage Act, 2006 (initially registered under Sections 363 and 366 IPC), registered at Police Station Siwan, District Kaithal (Annexure P-3) and all the subsequent proceedings arising therefrom, are quashed qua the petitioner.

01.04.2021

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No