

109

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

CRWP-10638-2021 (O&M)
Date of decision : 11.11.2021

Shivani and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sandeep Arora, Advocate for the petitioners.

Mr. N.K. Banka, DAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

CRM-W-1388-2021

Application is allowed, as prayed for.

Main case

The present Criminal Writ Petition has been filed under Article 226 of the Constitution of India for directing respondent Nos.2 and 3 to protect the life and liberty of the petitioners.

Learned counsel for the petitioners has submitted that petitioner No.1 is 18 years of age and her date of birth is 03.11.2003 as is apparent from her Aadhaar Card (Annexure P-3) and petitioner No.2 was born on 08.02.2002 as is apparent from his Aadhaar Card (Annexure P-2). It is, thus,

apparent that petitioner No.2 is although major but is not of marriageable age. It is further contended that the petitioners have performed marriage on 08.11.2021 and for the said purpose, photographs have been annexed alongwith the present petition as Annexure P-4. It is also submitted that the petitioners have given a representation dated 09.11.2021 (Annexure P-5) to respondent No.2 as they are apprehending harm to their life and liberty and have, thus, sought protection.

Learned counsel for the petitioners has relied upon the judgment passed by the Coordinate Bench of this Court in case **Jashanpreet Kaur and another Vs. State of Punjab and others**, reported as **2019(4) RCR (Civil) 183**, in which case although, girl therein was aged about 15 years and 8 months and boy was aged about 19 years and 3 months, yet the Coordinate Bench after considering the provisions of Hindu Marriage Act, 1955, was pleased to protect the life and liberty of the petitioners therein. The relevant portions of the said judgment is reproduced hereinbelow:-

“1 to 5 xxx xxx

6. *Facts, as pleaded in the petition, succinctly are that the petitioner No.1, a minor girl born on 04.10.2003 and petitioner No.2, a boy born on 10.03.2000, though a major, but not of marriageable age, purportedly are in love with each other and got married on 17.06.2019 at Panchkula according to Hindu Rites and Ceremonies. Photographs of their marriage have been appended with the petition.*

7 to 16. xxx xxx

17. *The issue in hand, however, is not marriage of the petitioners, but the deprivation of fundamental right of seeking protection of life and liberty. I have no hesitation to hold that Constitutional Fundamental Right under Article 21*

of Constitution of India stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.

18. It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. The mere fact that the petitioners are not of marriageable age would not deprive them of their fundamental right as envisaged in Constitution of India, being citizens of India.

19. In view of the discussion above, the Senior Superintendent of Police, Batala is directed to verify the contents of the petition particularly the threat perception of the petitioners and thereafter provide necessary protection qua their life and liberty, if deemed fit.

20. It is clarified that this order shall neither be treated as a stamp of this Court qua marriage of the petitioners nor any reflection on the merits of the contentions raised by them in the present petition.

21. The writ petition is, accordingly, disposed of. ”

Learned counsel for the petitioners has submitted that the petitioners would be satisfied in case respondent No.2-Commissioner of Police is directed to look into representation dated 09.11.2021 (Annexure P-5) and after seeing threat perception to the petitioners, takes appropriate action in accordance with law.

Notice of motion to respondent Nos.1 to 3 only.

On advance notice, Mr. N.K. Banka, DAG, Punjab, appears and

accepts notice on behalf of respondent Nos.1 to 3 and has stated that he has no objection in case, respondent No.2-Commissioner of Police, looks into the representation dated 09.11.2021 (Annexure P-5) and takes appropriate action in accordance with law.

After considering the abovesaid facts and without commenting upon the legality of the marriage and expressing any opinion on merits of the case, the present Criminal Writ Petition is disposed of with direction to respondent No.2 to look into the representation dated 09.11.2021 (Annexure P-5) and after considering the threat perception to the petitioners, respondent No.2 will take appropriate action in accordance with law.

It is, however, clarified that this order shall not debar the State from proceeding against the petitioners, if involved in any other case.

11.11.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No