

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

-.-

CRWP No.777 of 2022

Date of Decision : 04.02.2022

Rajinder Kaur and Another

....Petitioners

VERSUS

State of Punjab and Others

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Gautam Kaile, Advocate for the petitioners.

ALKA SARIN, J. (Oral)

Heard through video conferencing.

The present criminal writ petition has been filed under Article 226 of the Constitution of India for enforcement of fundamental right of the petitioners' seeking protection of their life and liberty as enshrined under Article 21 of the Constitution of India.

In brief, the facts relevant to the present case are that petitioner No.1 is aged 18 years and her date of birth is 20.01.2004 whereas petitioner No.2 is aged 20 years and 11 months and his date of birth is 01.03.2001. In support of their age proof, the petitioners have appended photocopies of their Aadhaar Cards as Annexures P-1 and P-2, respectively. It is averred that both the petitioners have known each other and have now solemnized their marriage on 31.01.2022. Respondent Nos.4 to 9, who are parents/relatives of petitioner No.1, are against the marriage of the petitioners. Since the private respondents are threatening to eliminate the petitioners, the petitioners have submitted a representation dated 22.01.2022 (Annexure P-4) to the Senior Superintendent of Police, Fazilka, District

Fazilka - respondent No.2. However, no action has been taken thereon. Learned counsel for the petitioners would further contend that at this stage he limits his prayer and would be satisfied if a direction is issued to respondent No.2 to decide the said representation dated 22.01.2022 (Annexure P-4).

Notice of motion.

On the asking of the Court, Mr. H.S. Multani, AAG Punjab, who has joined the session through video conferencing, accepts notice on behalf of respondent nos.1 to 3. Since the case is not being decided on merits, the service of notices upon the private respondents is dispensed with.

Heard learned counsel for the parties.

In the present case this Court, without expressing any opinion on the validity of the marriage of the petitioners, needs to consider as to whether the apprehension of the petitioners needs to be addressed.

This Court has taken note of the fact that petitioner No.2 is not of marriageable age as envisaged in Section 5(iii) of the Hindu Marriage Act, 1955. A Division Bench of the Delhi High Court in the case of ***“Jatinder Kumar Sharma V/s State & Anr.” [2010 SCC Online Delhi 2705]***, dealt with the complex issue regarding the marriage between two people ineligible to be married as envisaged under Section 5(iii) of the Hindu Marriage Act, 1955. In para 15, it was held by the Division Bench as under :

“15. Returning to the facts of the present case, we find that, merely on account of contravention of clause (iii) of section 5 of the HMA, Poonam’s marriage with

Jitender is neither void under the HMA nor under the Prohibition of Child marriage Act, 2006. It is, however, voidable, as now all child marriages are, at the option of both Poonam and Jitender, both being covered by the word child at the time of their marriage. But, neither seeks to exercise this option and both want to reinforce and strengthen their marital bond by living together. We also find that stronger punishments for offences under the Prohibition of Child marriage Act, 2006 have been prescribed and that the offences have also been made cognizable and non-bailable but, this does not in any event have any impact on the validity of the child marriage. This is apparent from the fact that while the legislature brought about these changes on the punitive aspects of child marriages it, at the same time brought about conscious changes to the aspects having a bearing on the validity of child marriages. It made a specific provision for void marriages under certain circumstances but did not render all child marriages void. It also introduced the concept of a voidable child marriage. The flip-side of which clearly indicated that all child marriages were not void. For, one cannot make something voidable which is already void or invalid.”

In the present case, though the issue in hand is not with regard to the validity of the marriage, but the fact is that the petitioners are seeking protection of life and liberty as envisaged under Article 21 of the Constitution of India. Article 21 of the Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of his life and personal liberty except as per the procedure established by law. In the present case, no doubt petitioner No.2 is not of

marriageable age as envisaged under Section 5(iii) of the Hindu Marriage Act, 1955. However, this Court cannot shut its eyes to the fact that the apprehension of the petitioners needs to be addressed. Merely because petitioner No.2 is not of marriageable age he cannot be possibly deprived of his fundamental rights as envisaged in the Constitution of India.

In view of the above discussion and without expressing any opinion with regard to the veracity of the contents of the petition and the submissions made by learned counsel for the petitioners, the present petition is disposed off with a direction to Senior Superintendent of Police, Fazilka, District Fazilka – respondent No.2 – to decide the representation dated 22.01.2022 (Annexure P-4) submitted by the petitioners and take necessary action as per law.

It is, however, made clear that this order shall neither be construed as an expression of opinion qua the veracity of the contents of the present petition nor as a stamp of this Court on the validity of the alleged marriage of the petitioners and shall have no effect on any other civil or criminal proceedings, if any, instituted/pending against them.

Disposed off accordingly.

February 04, 2022
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(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO