

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-3695 of 2019

Date of Decision: 14th December, 2022

Abdul Gaffar @ Jaimal

Petitioner

Versus

State of Haryana and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B. S. Tewatia, Advocate for the petitioner.
Mr. Gurmeet Singh, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

1. This is a petition seeking initiation of proceedings under Section 340 Cr.P.C. against respondent No. 2 (arrayed in the petition) for filing a forged Nikah certificate in CRM-M-41 of 2019.
2. From the pleadings, the facts emerging are that respondent No. 2 married daughter of the petitioner. The couple filed CRM-M-41 of 2019 seeking directions to the official respondents to protect their life and liberty from the hands of private respondents as they had solemnised marriage against the wishes of their parents.
3. The petition was disposed of on 4.1.2019 by passing the following order:

“The petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for issuance of directions to official respondents to protect their life and liberty from the hands of private respondents.

When this Court confronted with regard to the age of petitioner No.1 as 16 years, counsel for the petitioners has

referred to the ratio decidendi culled out by this Court in “Yunus Khan V/s State of Hayrana and others” 2014 (3) RCR (Criminal) 518 to contend that a minor muslim girl having attained the age of puberty (15 years), is entitled to voluntarily perform the marriage according to the Muslim Personal Law.

They have solemnized 'Nikah' on 22.11.2018 which is against the wishes of their parents. The factum of 'Nikah' has been pleaded with reference to the copy of 'Nikah Nama' (Annexure P-3). The petitioners have an apprehension at the hands of private respondent Nos.4 to 8 and in this regard, they have submitted representations dated 26.11.2018 and 11.12.2018 (Annexures P-4 & P-5) to the Superintendent of Police, Panchkula, Haryana/respondent No.2, but no action has been taken so far.

The present petition is disposed of with the direction to the Superintendent of Police, Panchkula, Haryana/respondent No.2 to look into the representation of the petitioners and decide the same and if required, provide the protection to the life and liberty of the petitioners by providing adequate security.

The Criminal Misc. petition stands disposed of.”

4. The grievance raised in the present petition is that signatures of the witnesses on Nikahnama were forged.

5. The Supreme Court in **R.S. Sujatha Versus State of Karnataka** and others 2011(5) SCC 689 has held as under:

"12. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of

the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

[Emphasis supplied).

6. The Supreme Court in **Iqbal Singh Marwah and another Versus Meenakshi Marwah and another**, 2005(4) SCC 370 has held as under:

"18. In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of

clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded."

[Emphasis supplied]

7. The proceedings under Section 340 Cr.P.C. are to be initiated only if it is expedient in the interest of justice to inquire into offence which has been committed and not in every case.

8. While disposing of CRM-M-41 of 2019 the Court had not commented either on the merits of the case or on the validity of marriage. In such circumstances, no case is made out for interference.

9. The petition is dismissed.

10. Since the main petition has been dismissed, pending application, if any is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

14th December, 2022

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1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No