

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

**CRWP No.1815 of 2022 (O&M)
DATE OF DECISION : 02.03.2022**

Nitin and AnotherPetitioner

versus

State of Punjab and OthersRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Mukesh Singh, Advocate for
Mr. Pankaj Garg, Advocate for the petitioners

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ALKA SARIN, J. (Oral):

Heard in physical mode.

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

As per the averments made in the petition, the date of birth of petitioner No.1 is 12.09.2002 (copy of the Aadhaar card is appended as Annexure P-1) and that of petitioner No.2 is 10.11.1999 (copy of the Aadhaar card is appended as Annexure P-2). Petitioner No.1 is about one and a half years short of turning 21 years. It has further been averred that

both the petitioners had developed a liking for each other and decided to solemnize their marriage. It has further been averred that the petitioners have tried their level best to convince the parents of petitioner No.2, however, they refused to accept their alliance and rather started threatening the petitioners that they would be eliminated. The petitioners solemnized their marriage on 24.02.2022 in accordance with Hindu Rites and Rituals. Both the petitioners apprehend danger to their life and liberty. Since the petitioners were apprehending danger to their life and liberty, a representation was also sent to respondent No.2 on 24.02.2022 (Annexure P-5). However, no action has been taken qua the same.

Learned counsel for the petitioners would contend that, at this stage, the petitioners would be satisfied if a direction is issued to respondent No.2 to take a decision on the representation dated 24.02.2022 (Annexure P-5) in accordance with law.

Notice of motion.

On the asking of the Court, Mr. Rehat Bir Singh Mann, DAG Punjab accepts notice on behalf of respondent Nos.1 to 3/State. The service on respondent Nos.4 to 7 is dispensed with, at this stage, as the matter is not being decided on merits.

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 is aware of the fact that the date of birth of petitioner No.2 is 10.11.1999 and she is a major and of marriageable age. However, the date of birth of petitioner No.1 is 12.09.2002. Though he is a major, but is not yet 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.” reported as 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.”

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 their 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 her or his life and personal liberty except as per the procedure established by law. In the present case, no doubt petitioner No.1 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.1 is not of marriageable age he cannot possibly be 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 the Senior Superintendent of Police, Bathinda - respondent No.2 - to decide the representation dated 24.02.2022 (Annexure P-5) and take necessary action as per law.

It is, however, made clear that this order shall not, in any manner be construed as an expression of opinion on the veracity of the statement made by the petitioners or on the validity of the marriage and shall have no effect on any other civil or criminal proceedings, if any, instituted/pending against them.

Disposed off accordingly.

(ALKA SARIN)
JUDGE

02.03.2022
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<u>NOTE:</u> Whether speaking/non-speaking: Speaking Whether reportable: YES/NO
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