

110

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-9183-2021 (O&M)

Date of decision:10.01.2022

PRIYANKA AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Virender Singh, Advocate
for the petitioners.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

Mr. Balraj Gujjar, Advocate
for respondent No.4.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. Petitioner No.1 is disclosed in the petition to be aged 19 years. She contracted marriage with co-petitioner No.2-Vijay, in the year 2021, and, the afore is disclosed on affidavit, to be at the relevant time, aged about 24 years.

2. *Prima facie* hence both the petitioners could enter into a valid contract of marriage. However, the petitioners averred in the petition that since co-respondent Nos. 4 to 8 were opposing, the love marriage entered amongst them. Therefore, they sought the making of a *Mandamus* against co-respondent Nos.2 and 3, for the latters providing adequate security to them, to ward off the purported threats as meted to the life of the petitioners, and, as purportedly emanate from the afore co-respondents Nos.4 to 8.

3. When the petition had come up on 28.09.2021, this Court after adjourning the matter to 28.10.2021, had made interim directions upon co-respondent No.2, to decide the petitioners' representation, as, carried in

Annexure P-5, and, also to take necessary action in accordance with law against the errants concerned.

4. In pursuance to the aforemade directions, the respondent concerned, had caused the appearance, before him, of the afore co-respondents, and, had also recorded their respective statements. A perusal of statements of co-respondent Nos. 4 to 8, as became recorded by the respondent concerned, more especially of the father of co-petitioner No.1, one Krishan Kumar, and, of one Lali Devi, the mother of the co-petitioner No.1, discloses that they are not meteing any threats to either of the co-petitioners, and, also both state, that they have no intention to mete any threats in future to the co-petitioners. In addition, they have also made narrations in their respectively recorded statements, that co-petitioner No.1, prior to hers solemnizing marriage with co-petitioner No.2, was already married with one Sumit son of Ramesh, resident of Kateshra, District Rohtak, and, that in respect of the co-petitioner No.1, eloping with co-petitioner No.2 they have lodged FIR No.155 dated 17.09.2021, hence under Section 346 of the IPC. Furthermore, it is also narrated therein, that after the lodging of the afore FIR, the above named parents of co-petitioner No.1, became aware of the factum, of the petitioners' solemnizing marriage in a temple, and, in respect thereof, theirs filing a civil suit in the High Court of Punjab and Haryana at Chandigarh.

5. However, it is furthermore stated at the bar by the learned counsels appearing for the litigants concerned, that no civil suit has been instituted, by the parents of co-petitioner No.1 before this Court. Nonetheless, it has been fairly stated before this Court by the learned counsels appearing for the contesting litigants, that an application bearing No.CRM-W-1241-2021, as, cast under Section 340 of the Cr.P.C., has been instituted before this Court, for causing

initiation of proceedings of perjury against the petitioners, and, as arise from the petitioners swearing a false affidavit before this Court, that co-respondent No.1 had not prior to hers entering into a contract of marriage with co-petitioner No.2, rather not entered into any marriage with any other person.

6. A reply to the afore application, was furnished by the learned counsel for the petitioners, and, it is candidly clear from a reading of paragraphs 2 and 3 of the apposite reply, that co-petitioner No.1, had earlier to hers solemnizing marriage with co-petitioner No.2, hence been compelled to enter into a contract of marriage, on 23.11.2016, with one Sumit. It is furthermore clear, from a reading paragraphs 2 and 3 thereof, that, at the afore stage co-petitioner No.1, was a minor, inasmuch as she was 14 years old, and, that she could not give a valid consent for hers entering, into a marriage earlier to the one which was entered into amongst the co-petitioners.

7. The learned counsel appearing for the petitioner argues, and, refers to the judgment of the Hon'ble Apex Court, as, made in case titled as **'Independent Thought V. Union of Indian and Anr.'** Writ Petition (Civil) No.382 of 2013 decided on 11.10.2017, wherein the Hon'ble Apex Court in paragraph 36, paragraph whereof becomes extracted hereinafter, has made an expostulation of law, that though Section 3 of the Prohibition of Child Marriage Act, makes a child marriage to be voidable at the option of the one of the parties to the child marriage, and, that hence a child marriage, is not *ipso-facto* void but only voidable. However, there onwards the Hon'ble Apex Court has also made an expostulation of law, that any sexual intercourse occurring amongst a minor, and, her major husband, if becomes reported rather would invite the penal provisions constituted under the Prevention of Children from Sexual Offences Act, 2012.

8. The aforemade expostulations of law, in so far as they appertain to the previous husband of co-petitioner No.1, purportedly indulging into any prohibited sexual intercourse with co-petitioner No.1, at a phase or an era, when she was a minor, cannot constrain this Court to make any directions to the police agencies concerned, against the errant concerned, as co-petitioner No.1, has rather never alleged, that during the course of her purportedly staying in the matrimonial company of her previous husband, the latter committed any sexual intercourse upon her. Contrarily it is vividly clear from the reply, filed to the above application, by the petitioners, that the above marriage never became consummated.

“36. Section 3 of the PCMA provides that a child marriage is voidable at the option of any one of the parties to the child marriage – a child marriage is not void, but only voidable. Interestingly, and notwithstanding the fact that a child marriage is only voidable, Parliament has made a child marriage an offence and has provided punishments for contracting a child marriage. For instance, Section 9 of the PCMA provides that any male adult above 18 years of age marrying a child shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both. Therefore regardless of his age, a male is penalized under this section if he marries a girl child. Section 10 of the PCMA provides that whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees; Section 11 of the PCMA provides punishment for promoting or permitting solemnization of a child marriage; and finally Section 13 of the PCMA provides that the jurisdictional judicial officer may injunct the performance of a child marriage while Section 14 of the PCMA provides that any child marriage

solemnized in violation of an injunction under Section 13 shall be void.”

9. The further question besetting this Court, in so far as the falsity, of the affidavit concerned, filed before this Court by the co-petitioners, can also become rested from the factum, that Section 3 of Prohibition of Child Marriage Act, though makes a marriage entered into by a minor girl to be voidable, and, not *void-ab-initio*, yet whether hence the concealment of the earlier voidable marriage at the instance of the co-petitioners, at the time of institution of instant petition, does purvey any leverage to the counsel for the respondent concerned, to contend that hence, proceedings for perjury be drawn against the petitioners.

10. In meteing an answer to the afore conundrum, it is relevant, to bear in mind, that the earlier voidable marriage, which purportedly occurred *inter-se* co-petitioner No.1, with one Sumit, though *prima-facie* did make co-petitioner No.1, to be construable to be previously married to him, and, also, it is important to bear in mind, yet whether hence, in the wake of the afore fact being concealed by the co-petitioners, in the instant petition, that whether proceedings, for perjury can become drawn against the co-petitioners. The answer to the afore is readily available, from the factum, that the afore Sumit, who otherwise alongwith his spouse, became vested, to access the civil Court concerned, has never instituted any civil proceeding, for annulling the marriage solemnized *inter-se* him and co-petitioner No.1, on the ground that the parents of co-petitioner No.1, at the relevant time misrepresented to him, about the age of co-petitioner No.1, and, that it be declared to be a *non-est* marriage, in the eyes of law. The effect of the afore slumber of the previous husband of co-petitioner No.1, and, also the fact that at the relevant stage rather co-petitioner No.1, being a minor, and, further that co-petitioner No.1, not alleging that she had entered into any sexual intercourse with the afore Sumit, contrarily hers alleging that the

earlier marriage, never became consummated, is that, in the subsequent marriage, as has occurred in the year 07.09.2021, necessarily, and, obviously rather the afore Sumit hence acquiescing to the factum of invalidity of the earlier marriage of co-petitioner No.1, with him. Since the declaratory relief (*supra*) was claimable by the parties concerned, and, not by the parents concerned, and, it becoming not claimed by the afore Sumit, nor by his purported spouse, therefore, *per-se*, the lack of afore recourse, does make the afore purported marriage to be construable, to become never entered into amongst the concerned.

11. Be that as it may, since it is also not denied, that in the year 2016 when co-petitioner No.1, had purportedly entered into a marriage, she was a minor, rather when she alleges that she was compelled against her wishes to marry, the afore Sumit, and/or that when she could not validly consent to her parents desiring to marry her to one Sumit, therefore, the afore marriage was no marriage in the eyes of law, irrespective of the fact of it being voidable, *moreso*, if so, rather, no declaration qua the afore becoming ever claimed.

12. Conspicuously the voidability of the earlier marriage of co-petitioner No.1 with one Sumit, was open for being so declared, on a motion being made, by Sumit, who admittedly however, has never instituted any civil proceedings, for the making of the afore declaration, and, also when he has, upon, solemnization of the subsequent marriage *inter-se* co-petitioners, rather in the year 2021, has not filed any civil proceedings, hence contesting the factum, that in the year 2016 co-petitioner No.1, was not a major, and, was competent to make a valid consent, for hers entering into a contract of marriage with him.

13. Consequently, the afore omissions, do constrain the Court, to, decline the drawings of proceedings of perjury against the petitioners.

Significantly also when the factual foundation, as well as the evidentiary foundation for the above, is neither well rested nor is vividly emerging.

14. Be that as it may, in the light of the statements of the parents of co-petitioner No.1, as made before the Competent Authority, they are directed to ensure that they (co-respondent Nos.4 to 8), may not interfere in the happy married life of the co-petitioners. In case they make any unlawful interferences or make threats to the co-petitioners, thereupon it is open to the co-petitioners to cast appropriate remedies in accordance with law.

15. Disposed of.

16. Pending miscellaneous application(s), if any, stand(s), disposed of.

CRM-W-1241-2021

There is no merit in the application, and, is dismissed.

(SURESHWAR THAKUR)
JUDGE

10.01.2022

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Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>