

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

CRWP No. 9924 of 2020

Date of Decision: 23.02.2022

Diya Rani and another

.....Petitioners

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Vishal Verma, Advocate, for
Mr. Rahul Soi, Advocate, for the petitioners.

Mr. M.S. Nagra, A.A.G., Punjab.

Mr. N.K. Vashisth, Advocate for respondents no. 4 and 5.

AMOL RATTAN SINGH, J. (ORAL)

On 04.12.2020 the following order had been passed by this
court:-

*“All the cases listed today have been taken
up for hearing by way of video conferencing because of
the situation existing due to the Covid-19 pandemic.*

*By this petition, the petitioners seek
protection of life and liberty at the hands of respondents
no.4 to 11, upon the petitioners having married each
other (as contended) against the wishes of the said
respondents, on 19.11.2020.*

*Admittedly both the petitioners are below
the legally marriageable age for males and females
under the provisions of the Hindu Marriage Act, 1955,
as also the Prohibition of Child Marriage Act, 2006.*

*Even so, equally obviously, they are entitled
to protection of life which is a fundamental right
enshrined in Article 21 of the Constitution of India;
however, as regards liberty, such liberty is*

circumscribed by the rule of law and in terms of Section 15 of the Act of 2006, the offences punishable under the provisions of that Act are cognizable offences.

Clause (a) of Section 12 of that Act stipulates that if a minor child is enticed away from the guardianship of her/his legal guardian, it would be a void marriage (and not just voidable at the instance of the minor upon attaining majority).

Notice of motion is issued, with Mr. Ramdeep Partap Singh, learned AAG, Punjab, accepting notice on behalf of respondents no.1 to 3, on the asking of the court, with respondents no.4 to 11 to be served by way of normal process, with such notices issued to be returnable on 16.12.2020.

Since petitioner no.1 is admittedly below 18 years of age (though she is stated to be 17 ½ years of age), with petitioner no.2 also being 19 years of age, with the legally marriageable age for males being 21 years, the SSP, Sangrur, is directed to get obtained firm proof of the actual age of both the petitioners from the institutions that they last studied and if they are found to be below the legally marriageable age in terms of the provisions of the Act of 2006, proceedings under the relevant provisions of that Act shall be initiated, such offences being cognizable offences under that Act, as noticed herein above.

Other than that, of course life and liberty of the petitioners shall be duly protected as per law, at the hands of respondents no.4 to 11.

*It is to be noticed here that learned counsel for the petitioner has relied upon a judgment of this court in *Rajveer Kaur and another v. State of Punjab and others*, 2019 (3) RCR (Civil) 478. However, upon*

query by this court, he very fairly submits that the said judgment does not take into consideration the provisions of the Act of 2006.

It also needs to be observed here that though in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956, custody of even a minor married girl would be with her husband, yet with Section 12 of the Act of 2006 making the marriage possibly even void if enticement is proved, naturally, it would be a matter to be enquired into as to whether it is only voidable or a void marriage, with again it to be repeated though, that petitioner no.1 is shown to be only 6 months short of the age of adulthood.

Be that as it may, in any case the question of custody would have no relevance for the purpose of proceedings as regards cognizable offences made out under the provisions of the Act of 2006.

A detailed reply is directed to be filed to the petition on behalf of the State by a gazetted officer, taking into account what has been observed hereinabove.”

Thereafter, upon an affidavit having been filed on behalf of the respondent-State, showing that the date of birth of petitioner no. 1 is 30.05.2004, this court had observed in its order dated 17.02.2021 that she was therefore only 15 years, 05 months and 19 days old on the date that she is stated to have got married with petitioner no. 2, i.e. 19.11.2020; and though protection of life would be a fundamental right still available to them, as regards liberty it would be in terms of the provisions of law, they obviously having (as per their own admission in the petition itself), violated the provisions of both Section 5 (iii) of the Hindu Marriage Act, 1955 and

more importantly, the Prohibition of Child Marriage Act, 2006.

Consequently, with the petitioners' age being given as it is and with the age of petitioner no. 2 stated to be only 19 years of age (below marriageable age for males also), the SSP, Sangrur, had been directed to ensure that petitioner no. 1 was brought to meet her parents (respondents no. 4 and 5), to the Mediation and Conciliation Centre in the District Court at Sangrur on 26.02.2021. Thereafter, the matter had been adjourned, with counsel for the petitioners not appearing time and again, he in fact never having appeared after 18.12.2020.

Today, though the counsel whose power on attorney is on record (Mr. Rahul Soi, Advocate), has not appeared again, Mr. Vishal Verma, Advocate, appears and submits that the petitioners, no longer wish to pursue this petition.

Since his power of attorney is not on record that statement cannot be accepted but with learned State counsel and counsel for respondents no. 4 and 5 both submitting that petitioner no. 1 is now living with respondents no. 4 and 5 and that criminal proceedings have been initiated against petitioner no. 2, this petition is disposed of with a direction that the life of the petitioners would continue to be protected even in terms of Article 21 of the Constitution of India, and as regards liberty, proceedings already initiated would continue, as per law.

February 23, 2022

nitin

Whether speaking/reasoned

Whether Reportable

(AMOL RATTAN SINGH)

JUDGE

Yes

No.