

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

**CRWP No.11616 of 2022
Date of decision: 17.04.2023.**

Rachpal Singh and others

...Petitioners

vs.

State of Punjab and others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. H.S. Randhawa, Advocate
as Amicus Curiae.

Mr. M.S.Bajwa, DAG, Punjab.

N.S.Shekhawat J.

1. The present petition under Article 226 of the Constitution of India has been filed by Rachpal Singh, aged 20 years (petitioner No.1), his parents as well as by Ranbir Kaur (petitioner No.6), aged 14 years and her parents, for protection of their lives and liberty and a further prayer has been made to direct the respondents No.4 to 6 not to interfere in their peaceful lives.

2. It was averred in the petition that Rachpal Singh, petitioner No.1 and Ranbir Kaur (minor), petitioner No.6 were engaged with each other and it was decided that the marriage between petitioner No.1 and petitioner No.6 shall be performed, on attaining the age of majority by petitioner No.6. It was stated that respondent No.4 i.e. the grand-father of petitioner No.1, respondent No.5, who is owner of a Youtube News Channel and respondent No.6 i.e. Chairperson of Child Protection Unit, Tarn Taran (Punjab) were against the said relationship.

It was also stated that the present petitioners, while apprehending danger to their lives and liberty, even submitted a representation dated 06.12.2022 (Annexure P-7) to the local police, but no action was taken on the same under the local influence of respondents No.4 to 6 and still threats were being extended to them.

3. Since the petitioners wanted to perform the marriage of Ranbir Kaur, petitioner No.6, who was admittedly aged about 14 years and 3 months, this Court had taken very serious view of the matter and directed the Station House Officer, Police Station Sadar, Patti, District Tarn Taran to ensure the presence of mother of Ranbir Kaur i.e. petitioner No.5 as well as the Chairperson of Child Protection Unit, Tarn Taran, respondent No.6 before this Court.

4. During the course of proceedings, Chairperson, Child Welfare Committee, Tarn Taran (Respondent No.6) appeared before this Court and submitted her reply by way of her affidavit. It was contended by respondent No.6 that on 14.11.2022, an information was received by the Child Helpline No.1098 regarding the performing of child marriage of a girl, namely, Ranbir Kaur, aged about 15 years (Petitioner No.6) with Rachpal Singh (petitioner No.1) at Baba Vir Singh Gurdwara Patti Morh, District Tarn Taran. The District Child Welfare Protection Officer, Tarn Taran along with SHO and CDPO enquired the matter and they found that no marriage was performed at the disclosed place. Later on, they went to the house of Ranbir Kaur (Petitioner No.6), where they found that the tents had been erected there and meals for the guests was also there. The photographs were clicked, however, petitioner No.6 i.e. the minor girl and Rachpal Singh (Petitioner No.1) were not produced

before the team by the family members. The District Child Protection Officer, directed the SHO, Police Station Sabhra to produce the minor girl and the boy and their family members before them on 15.11.2022.

5. On 15.11.2022, the Station House Officer, Police Station Sabhra, produced petitioner No.1, 2, 5 and 6 before the Child Welfare Committee, Tarn Taran and their statements were recorded and in their statements, they had admitted the fact that the marriage between petitioner No.1 and petitioner No.6 (minor) was solemnized on 14.11.2022. The proceedings were held by the Child Welfare Committee and the parties were made to understand that the marriage of minor was illegal as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the Juvenile Act) and specific instructions were issued to petitioner No.5 (mother of minor girl) that minor girl i.e. petitioner No.6 should be allowed to complete her basic education and instructions were also issued to Child Protection Unit that the follow-up should be done at the house of the minor girl (petitioner No.6) after every 15 days. The proceedings of Welfare Committee were also placed on record as Annexure R-6/7.

6. The matter was taken up on various dates before this Court. During the course of proceedings, Malkiat Court (petitioner No.4), the grandmother of the minor girl and Simranjit Kaur (petitioner No.5) mother of the minor girl produced their duly sworn affidavits and the same were taken on record. Both of them stated in the affidavits that they were not aware of the exact age of the marriage of a girl as per law. When they came to know about the said fact, they stopped the solemnization of her marriage. They had further assured that they would not solemnize the marriage of Ranbir Kaur (Petitioner

No.6), minor girl till the attaining of the age of majority and in case, they repeat the said act in future, they shall be liable to face legal action.

7. I have heard Mr. H.S.Randhawa, learned Amicus Curiae and Mr. M.S.Bajwa, Deputy Advocate General, Punjab at length and also perused the record carefully.

8. Section 2(14)(xii) of the Juvenile Act defines "Child in care of need and protection". It clearly says that a child, who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage, shall be known as "Child in need of care and protection". Section 27 of the Juvenile Act provides for Constitution of Child Welfare Committee for every district. Any child, who has been held to be "Child in need of care and protection" should be produced before a Child Welfare Committee constituted under the Act, so that the Committee may care and protect her and may pass an appropriate orders for rehabilitation of such a child.

9. The Hon'ble Supreme Court, while elaborating the law in this regard, in the matter of ***"Independent Thought Vs. Union of India"*, 2017(4) RCR (Criminal) 595; 2017 AIR (SC) 4904** held that a girl child cannot be treated as a commodity having no say over her body or someone, who has no right to deny sexual intercourse of her husband. The human rights of girl child are very much alive and kicking whether she is married or not and deserves recognition and acceptance.

10. The Hon'ble Supreme Court further observed as under:-

"176.By now it is well settled by a catena of judgments of this Court that the "right to life" envisaged in Article 21 of

the Constitution of India is not merely a right to live an animal existence. This Court has repeatedly held that right to life means a right to live with human dignity. Life should be meaningful and worth living. Life has many shades. Good health is the raison d'etre of a good life. Without good health there cannot be a good life. In the case of a minor girl child good health would mean her right to develop as a healthy woman. This not only requires good physical health but also good mental health. The girl child must be encouraged to bloom into a healthy woman. The girl child must not be deprived of her right of choice. The girl child must not be deprived of her right to study further. When the girl child is deprived of her right to study further, she is actually deprived of her right to develop into a mature woman, who can earn independently and live as a self sufficient independent woman. In the modern age, when we talk of gender equality, the girl child must be given equal opportunity to develop like a male child. In fact, in my view, because of the patriarchal nature of our society, some extra benefit must be showered upon the girl child to ensure that she is not deprived of her right to life, which would include her right to grow and develop physically, mentally and economically as an independent self sufficient female adult."

11. The Hon'ble Supreme Court also made the following observations:-

"95. A cursory reading of the JJ Act gives a clear indication that a girl child who is in imminent risk of marriage before attaining the age of 18 years of age is a child in need of care and protection (Section 2 (14) (xii) of the JJ Act). In our opinion, it cannot be said with any degree of rationality that such a girl child loses her status as a child in need of care and protection soon after she gets married. The JJ Act provides that efforts must be made to ensure the care,

protection, appropriate rehabilitation or restoration of a girl child who is at imminent risk of marriage and therefore a child in need of care and protection. If this provision is ignored or given a go by, it would put the girl child in a worse off situation because after marriage she could be subjected to aggravated penetrative sexual assault for which she might not be physically, mentally or psychologically ready. The intention of the JJ Act is to benefit a child rather than place her in difficult circumstances. A contrary view would not only destroy the purpose and spirit of the JJ Act but would also take away the importance of Article 15(3) of the Constitution. Surely, such an interpretation and understanding cannot be given to the provisions of the JJ Act." (emphasis added)

12. The Hon'ble Supreme Court further observed as under:-

*"83. Merely because child marriages have been performed in different parts of the country as a part of a tradition or custom does not necessarily mean that the tradition is an acceptable one nor should it be sanctified as such. Times change and what was acceptable the few decades ago may not necessarily be acceptable today. This was noted by a Constitution Bench of this Court (though in a different context) in **State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd., [1964] 6 SCR 846** that:-*

"But, by the passage of time, considerations of necessity and expediency would be obliterated, and the grounds which justified classification of geographical regions for historical reasons may cease to be valid."

13. Even this Court has held in the matter of “**Khushpreet Singh and another Vs. State of Punjab and others**” 2022(3) RCR (Civil) 988 as follows:-

“19. The enunciation of statutory framework in the nature of Juvenile Justice (Care and Protection of Children) Act 2015 and Protection of Children from Sexual Offences Act does not run contrary to the provisions enshrined under Article 21 of the Constitution of India. Protection of life and liberty guaranteed to a citizen necessarily ensures that the Court of law, when approached, would step into the shoes as a guardian of such minor and take all such steps as are essential to protect the life and liberty of such a minor. It would be incomprehensible to contend or to suggest that the protective scheme and procedure formulated under the Juvenile Justice (Care and Protection of Children) Act 2015 is not in furtherance of protection enshrined under Article 21 of the Constitution of India. The said Acts are intended to ensure advancement of Article 21. The Court of law, while issuing any directions to follow the procedure provided for under the Juvenile Justice (Care and Protection of Children) Act 2015, does so with an object to ensure safety and protection of a minor, who the law does not recognise as having acquired the wisdom and knowledge to take best decisions for himself/herself. The decision so taken by the competent authority with respect to the minor as per the procedure prescribed in law, cannot be deemed as violative of Article 21 of the Constitution of India with on a ground that such a decision will not be in conformity with the interest which such a minor conceives to be in his/her best interest. The Court cannot be oblivious to the duty cast upon it as a repository of the best interest of the minor and there can be no presumption that once a minor conveys his/her

desire to stay with any person and that such person claims to be the next friend/de facto guardian, the same would actually and in reality be in furtherance of the best interest of the minor. Determination of what would be in the best interest of the minor has to be done by the Court as per the procedure known to law.”

14. Keeping in view the above referred principles of law and adverting to the facts of the present case, it can be safely concluded that in the present case, Ranbir Kaur (minor) petitioner No.6 is a "child in need of care and protection" and this Court while exercising its *parens patriae* jurisdiction has to examine as to what is in the best interest of the child and has to pass an appropriate orders for the welfare, care and rehabilitation of the "child in need of care and protection" i.e. petitioner No.6.

15. In compliance of the interim orders passed by this Court, the grandmother and the mother of Ranbir Kaur i.e. petitioners No.4 and 5 have already submitted their respective affidavits and it is ordered that both of them shall remain bound by their respective affidavits. They will make all endeavour to provide basic education and care to petitioner No.6 and will not perform the marriage of Ranbir Kaur (minor) till she attains the age of majority. Apart from that, Child Welfare Committee shall also be free to conduct an inquiry on all issues relating to and affecting the safety and well-being of petitioner No.6. The Child Welfare Committee shall be at liberty to associate all the stakeholders and shall also ensure that the objects of Juvenile Justice (Care and Protection of Children) Act 2015 are achieved. Even the Child Welfare Committee shall also be at liberty to pass such appropriate interim/final orders regarding the care and

protection of petitioner No.6. Apart from that, the Chairperson, Child Welfare Committee shall depute a Child Welfare Officer to randomly visit the residence of petitioner No.6 at least twice a month to ensure that the petitioners No.4 and 5 are taking proper care of petitioner No.6 and in case, petitioner No.6 has any complaint or grouse, the Chairperson, Child Welfare Committee shall be at liberty to proceed strictly in accordance with the provisions of Juvenile Justice (Care and Protection Child) Act, 2015. The Chairperson, Child Welfare Committee shall continue to comply with above referred directions till the petitioner No.6 attains the age of majority.

16. The Registry of this Court is directed to send a certified copy of this order to Deputy Commissioner, Tarn Taran; Senior Superintendent of Police, Tarn Taran; Station House Officer, Sadar Patti, District Tarn Taran and Chairperson, Child Welfare Committee, Room No.307, District Administration Complex, Tarn Taran (Punjab) for strict compliance.

17. With the above-said observations, the present petition is disposed of.

(N.S.SHEKHAWAT)
JUDGE

17.04.2023
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No