



224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22184-2019 (O & M)
Date of decision: 11.12.2024

LAL HUSSAN AND OTHERS

...PETITIONERS

V/S

THE STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Lakhwinder S. Lakhanpal, Advocate for the petitioners.

Mr. Sandeep Kumar, DAG, Punjab.

Ms. Gaganbir Kaur Kahlon, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.28 dated 30.04.2019 under Sections 363/366/436/427 of IPC, registered at Police Station Sujampur, District Pathankot (Annexure P-6) and all the subsequent proceedings emanating therefrom qua the petitioner.

2. On 05.11.2024, the following order was passed :

“Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.28 dated 30.04.2019 under Sections 363/366/436/427 of IPC, registered at Police Station Sujampur, District Pathankot (Annexure P-6) and all the subsequent proceedings emanating therefrom.

Learned counsel for the petitioners, inter alia, contends that petitioner No.5 and prosecutrix-respondent No.3 fell in love with each other and their relationship was opposed to the family of respondent No.3. Due to their opposition, both of them eloped together and performed marriage on 02.05.2019. In the meantime, respondent No.2 being uncle of prosecutrix-respondent No.3 lodged the FIR (supra). Learned counsel relies upon the marriage



certificate (Annexure P-3) and photographs of the marriage ceremony (Annexure P-4).

Thereafter, petitioner No.5 and respondent No.3 approached Punjab State Human Rights Commission, Chandigarh seeking protection and the same was disposed of on 08.05.2019 as discernible from Annexure P-5.

*Learned counsel for the petitioner submits that petitioner No.5 and respondent No.3 are cohabiting together as husband and wife. At the time of the incident, the age of petitioner No.5 was 18 years and of respondent No.3 was 17 years and 06 months. Now, respondent No.3 is major and she is cohabiting with petitioner No.5 as his legally wedded wife and they are blessed with one child. Reliance has been placed upon the judgment of the Hon'ble Supreme Court passed in '**K. Dhandapani Vs. The State by The Inspector of Police**' 2022 SCC Online SC 1056 and a full Bench judgment of the Delhi High Court passed in '**Lajja Devi Vs. State**' 2012 (4) CCR 72.*

In view of the above, the jurisdictional police authorities are directed to verify the veracity of marriage between petitioner No.5 and respondent No.3 as well as birth of the child out of their wedlock and file affidavit in this regard.

Adjourned to 11.12.2024."

3. In compliance of the aforesaid order, learned State counsel has filed an affidavit dated 10.12.2024 of Lakhwinder Singh, PPS, Deputy Superintendent of Police, Sub Division Dhar Kalan, District Pathankot on behalf of respondent No.1-State, which is taken on record. Learned State counsel refers to para 4 of the affidavit and submits that the veracity of the factum of marriage between petitioner No.5 and respondent No.3 has been thoroughly examined and it has been found that both of them have performed married on 02.05.2019 and out of this wedlock, they have two children i.e. one boy born on 09.10.2021 and one girl born on 09.08.2024 and the statement of the headman of the village has been recorded in this regard, which is available on record as Annexure R-1/T. Further the statement of the person, who



performed the marriage of petitioner No.5 and respondent No.3 was also recorded, who stated that both of them got married on 02.05.2019 and the factum of their marriage was recorded in the register at entry No.82/5. Further, as per the statement of the person, who performed their marriage, petitioner No.5 and respondent no.3 were major and the marriage certificate was also verified.

4. Learned counsel for the petitioners submits that respondent No.2 is merely an informant, however, the actual victim is respondent No.3, who is major and she is capable of taking decision for her welfare and now she is cohabiting with petitioner No.5 as his legally wedded wife.

5. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that respondent No.3 has solemnized marriage with petitioner No.5. The marriage between two persons who do not satisfy the age criterion, as laid down by Section 5 of the Hindu Marriage Act, 1955, does not become void *ab inito*. Such a marriage would be voidable at the instance of the minor party. Therefore, in absence of such declaration in view of the Prohibition of Child Marriage Act, 2006, the marriage subsists and the husband can be the legal guardian of his minor wife, as reaffirmed by a Division Bench of this Court in ***Mamta v. Rohan Verma*** 2022(2) R.C.R.(Civil) 349.

6. Respondent No.3 has now attained the age of majority and wants to continue with her matrimonial life and she is happily married to petitioner No.5. If the criminal proceedings against petitioners allowed to continue, not only will it lead to unnecessary incarceration of the petitioner but also leave respondent no.3 bereft of financial and emotional support. Thus, no useful purpose would be served by continuing the proceedings as the chances of



conviction are abysmal. The continuance of the present proceedings in the present case, would be nothing but wastage of valuable judicial time, especially, when the Courts are already over-burdened.

7. In view of the factual circumstances of the case and also the specific report filed by State of Punjab-respondent No.1, the present petition is allowed.

8. Accordingly, the FIR No.28 dated 30.04.2019 under Sections 363/366/436/427 of IPC, registered at Police Station Sujampur, District Pathankot (Annexure P-6) and all other consequential proceedings arising therefrom, are quashed qua the petitioners.

December 11, 2024
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |