

(2018) 07 P&H CK 0162

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15296 Of 2018 (O&M)

A And Another

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 20-07-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Special Marriage Act, 1954 — Section 4, 5, 6, 14

Citation : (2018) 191 PunLR 596 : (2018) 3 RCR(Civ) 947

Hon'ble Judges : Rajiv Narain Raina, J

Bench : Single Bench

Advocate : Tanu Bedi, Vibhu Agnihotri, Lokesh Sinhal, Vrinda Gupta, Prateek Mahajan, Chetan Mittal, Brijeshwar Singh Kanwar

Final Decision : Disposed Off

Judgement

Rajiv Narain Raina, J

1. Having regard to the reply by way of affidavit of Vinay Pratap Singh, IAS, Deputy Commissioner-cum-Marriage Officer, Gurugram together with his assurance that no officials are directed to visit the residences of the applicants to verify their residential addresses, the apprehension and fears of the petitioners stand allayed.

2. The petitioners are without doubt in a relationship and want to marry. They may belong to different religions but love and affection knows no barriers. They wish to tie the nuptial knot through court marriage aided by the provisions of the Special Marriage Act, 1954 (for short "the Act") under which law alone the marriage can be solemnized and none other since one party is a Hindu, the other Muslim. Petitioner No 1 says she does not wish to convert to the religion of petitioner 2 which is her personal choice. They both are adults expected to know what is best for them, their personal and common interests and their future life together as and when they are declared legally wedded husband and wife. They are both well educated persons pursuing their careers as Cost Accountants in

private companies.

3. They have approached this Court through this petition filed under Article 226 of the Constitution seeking directions to the District Marriage Officer, Gurugram to desist sending notices of intended marriage to their parents and publication of proposed marriage in a National newspaper as condition 15 of the Check List demands. Petitioner No 1 is a Hindu who faces virulent opposition to the proposed marriage from her parents as projected by her in the pleadings and at the hearing. They want to do away with procedure in a check list of notices to parents which impinges on their right to privacy, which right is declared fundamental in character recently by the highest Court in the land in Justice (ret'd) K.S.Puttaswami & others v. Union of India & others, (2017) 10 SCC 1.

4. If they marry it would be by following the procedure in the Act starting Section 5 which provides as follows:-

"5. When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given."

5. Section 6 would also have to be satisfied which provision reads as under:-

"6. (1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office."

6. The Haryana Government has issued a Court Marriage Check List (CMCL), Gurugram ostensibly to give effect to the mechanism in the Act which check list has 16 conditions spelled out therein for compliance and the same are reproduced for ready reference:-

"1. One of the applicants should be a resident at Gurugram.

2. Notice of Marriage (Affix Court Fees stamp Rs. 25)

3. Proof of date of Birth Bridegroom/Bride (Pan No., Matriculation, Certificate).
4. Proof of residence (Bridegroom/Bride) passport, Ration Card, Voter I.D. Card, Electricity bill, BSNL Telephone bill, Gas Connection etc.)
5. Marriage Notice Fees of Rs.90/- to be paid through Treasury Challan.
6. Notice to be witnessed by 3 persons of residence/ID of all. All the witness to be present in the D.C.'s Court on the date of apply and marriage solemnization.
7. Fees details etter (Affix Court fees stamps worth Rs. 10/-
8. Affidavit by Bridegroom/Bride on stamp paper of Rs.10/- which is to be attested by Notary Public.
9. Two photographs of all persons signing these documents.
10. NOC from concerned Embassy.
11. Four envelops with requisite postal stamps to send the notice to home address of applicants and to Marriage Officer of the district where applicants have their permanent residence. (Supply name designation of Marriage Officer of the District where the applicants have their permanent residence.
12. Tehsildar to verify that the applicant(s) is/are staying in Gurugram. The case move further only after this verification report reaches the DC's Court.
13. Applicants Bridegroom/Bride both should not be staying at one place (under one roof) at the time of applying.
14. Marriage to be solemnized within 3 months from the date of Notice to the Marriage Officer (other wise the entire exercise have to be repeated.)
15. Publication in National Newspaper.
16. Notice of Marriage applications-Min. 30 days." (Underlined for emphasis)
7. The petitioners especially refer to portions of the CMCL underlined above. The CMCL directives are urged by the learned counsel for the petitioners in the joint petition to be highly offensive, insensitive, arbitrary, primitive and out of sync with rapidly changing social order in an inter-faith proposed marriage. Mostly they violate private rights and the scheme of which is beyond the scope of the Act which makes no such list of 'dos and dont's' as part of prescribed procedure. Besides, being foul by active moral policing as in condition 13 in a country where live-in relationships are judicially recognized by courts as precious rights among informed adults, whether or not they intend to marry so long as they do not violate any law.
8. Heard and interacted with the petitioners in Court on the previous date, and today heard their learned counsel, Mr. Chetan Mittal Sr Advocate and ASGI for Central Government and Mr. Lokesh Sinhal, Addl AG for the State of Haryana.

9. In the considered view of this Court the CMCL, except as indicated below, deserves to be disregarded as its terms and conditions largely violate the rights to privacy of the petitioners which is now declared fundamental right. The provisions appear particularly offensive and excessive executive action beyond the purview of the Act and have, therefore, to be ignored save and except the provision of residence/domicile to confer jurisdiction on the Marriage Officer in the last sentence of condition No.11. But the word "permanent" in condition 11 will be read down to mean also temporary residence which would suffice if stay is for 30 days prior to the filing of the application under Section 5 of the Act. The petitioners are willing to provide their respective passports to prove their domiciles and places of permanent/temporary residence in Gurugram/ for 'A' and Faridabad for 'B'. This should suffice and be excepted by the Marriage Officer, Gurugram. However, condition No.14 is to be obeyed as it has statutory backing and shall be employed in the manner prescribed under Section 14 of the Act. Advance notice to parents of the petitioners shall be dispensed with as are not required to strictly maintain privacy rights, their right to life and liberty in view of the rulings of the Delhi High Court and the Rajasthan High Court in cases *Pranav Kumar Mishra & Anr. v. Government of NCT of Delhi & Anr*, WP (C) 748 of 2009 decided on 18.04.2009 in which ruling the Division Bench of the Delhi High Court held while considering similar circumstances and the provisions of the Act. The Court observed as follows:

"The Petitioner's concerns and apprehensions are justified. Absent any legal compulsion - as is the position -for sending notices to residential addresses in case of solemnization of the marriage, in terms of Sections 4 and 5, their dispatch can well amount to breach of the right to privacy, which every individual is entitled to."

It was further held:

"It is to be kept in mind that the Special Marriage Act was enacted to enable a special form of marriage for any Indian national, professing different faiths, or desiring a civil form of marriage. The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances, it may even endanger the life or limb of one at the other party due to parental interference."

10. To clarify and clear doubts, the residential address declared by either of them in the Form filed before the Marriage Officer of intended marriage prescribed in the Second Schedule of the Act, shall be treated as self-attestation of the residential addresses, which if later found to be incorrect, the State may take such action as is warranted by law. If parties are willing to submit attested copies of passports as proof of residence, with original shown to the Marriage Officer it should be accepted without demur.

11. Accordingly, the petitioners may apply to the Marriage Officer under Section 5 in the Form prescribed in the Second Schedule to the Act. The same will be

considered by the Marriage Officer in the light of this order and in the light of Sections 4, 5, 6 and 14 of the Act. And after putting up notice/banns on the Notice Board at a conspicuous place in his office for

30 days, he may proceed to register the marriage and issue certificate of marriage to the petitioners. In case, any objections, if filed, are grave in nature, he may deal with them in accordance with law by keeping uppermost in his mind the wish/desire/choice of the petitioners, which is the supreme consideration.

12. It is suggested to the State of Haryana to suitably modify and simplify the CMCL to bring it in line with the Act by minimal executive interference. It may restrict the list to conditions which account for fundamental procedure avoiding unwarranted overload of obstructions and superfluity. The State is not concerned with the marriage itself but with the procedure it adopts which must reflect the mind-set of the changed times in a secular nation promoting inter-religion marriages instead of the officialdom raising eyebrows and laying snares and land mines beneath the sacrosanct feet of the Special Marriage Act, 1954 enacted in free India to cover cases not covered by any other legislation on marriages as per choice of parties for a court marriage.

13. As a result, the writ petition is accepted. The respondent District Marriage Officer, Gurugram is directed to consider and process the request for solemnization of marriage of the petitioners after the notice of intended marriage is filed by them in the proper Form under Section 5 of the Act.

14. With these observations and directions, the petition stands disposed of.