

(2020) 07 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 4541 Of 2020 (O&M)

Anita &Anr.

APPELLANT

Vs

State Of Punjab And Others.

RESPONDENT

Date of Decision : 08-07-2020

Acts Referred:

Hindu Marriage Act, 1955 — Section 5(iii)
Constitution Of India, 1950 — Article 21, 226, 227

Citation : (2020) 07 P&H CK 0038

Hon'ble Judges : Alka Sarin, J

Bench : Single Bench

Advocate : Neeraj Madaan

Judgement

Alka Sarin, J

1. Heard through Video Conferencing.
2. The present criminal writ petition has filed under Article 226/227 of the Constitution of India for enforcement of fundamental right of the petitioners seeking protection of their life and liberty as enshrined in Article 21 of the Constitution of India.
3. In brief the relevant facts are that petitioner No.1 is aged about 17 years and 10 months and petitioner No.2 is about 24 years. It has been averred in the petition that the petitioners have known each other for a long time and decided to solemnize their marriage. On 02.07.2020, the petitioners solemnized their marriage at Jalalabad, District Fazilka, according to Sikh Rites against the wishes of their parents and relatives. It has been further averred that both the petitioners belong to different castes as petitioner No.1 belongs to Scheduled Caste and petitioner No.2 belongs to Mahajan Community.

4. It has further been contended by learned counsel for the petitioners that the parents of petitioner No.1 (who are respondent Nos. 4 and 5 in the instant petition) and relative of petitioner No.2 (who is respondent No.6) are against the marriage of the petitioners and are threatening the petitioners with dire consequences and have openly been stating that they would eliminate the petitioners whenever they get a chance.

5. Apprehending danger to the lives, the petitioners approached the Superintendent of Police, Fazilka with their representation on 02.07.2020

(Annexure P-4). However, no action has been taken on the same. Meanwhile, the petitioners filed the instant petition seeking protection of their life and liberty.

6. Notice of motion.

7. On the asking of the Court, Ms. Rashmi Attri, AAG, Punjab, has joined the session through Video Conferencing and accepts notice.

8. Heard learned counsel for the parties.

9. In the present petition this Court, without expressing any opinion on the validity of the marriage of the petitioners, needs to consider as to whether the apprehension of the petitioners needs to be addressed.

10. This Court has taken note of the fact that the girl in the instant case i.e. petitioner No.1 is aged 17 years and 10 months and petitioner No.2 is aged about 24 years. Petitioner No.1 is not of marriageable age as envisaged in Section 5

(iii) of the Hindu Marriage Act. In a case having similar facts, a Division Bench of the Delhi High Court in the case of Sh. Jatinder Kumar Sharma Vs.

State and Anr. reported as 2010 SCC online Delhi 2705 dealt with the complex issue regarding the marriage between two people ineligible to be

married as envisaged in Section 5 (iii) of the Hindu Marriage Act. In para 15 it was held by the Division Bench:-

“15. Returning to the facts of the present case, we find that, merely on account of contravention of clause (iii) of section 5 of the HMA, Poonam's

marriage with Jitender is neither void under the HMA nor under the Prohibition of Child marriage Act, 2006. It is, however, voidable, as now all child

marriages are, at the option of both Poonam and Jitender, both being covered by the word 'child' at the time of their marriage. But, neither seeks to

exercise this option and both want to reinforce and strengthen their marital bond

by living together. We also find that stronger punishments for offences under the Prohibition of Child Marriage Act, 2006 have been prescribed and that the offences have also been made cognizable and non-bailable but, this does not in any event have any impact on the validity of the child marriage. This is apparent from the fact that while the legislature brought about these changes on the punitive aspects of child marriages it, at the same time brought about conscious changes to the aspects having a bearing on the validity of child marriages. It made a specific provision for void marriages under certain circumstances but did not render all child marriages void. It also introduced the concept of a voidable child marriage. The flip-side of which clearly indicated that all child marriages were not void. For, one cannot make something voidable which is already void or invalid.â??

11. Further, in the said case the Division Bench also considered the question of custody of the minor girl. After detailed discussion, the Division Bench held as under:-

â??23. In the present case, Poonam is a minor Hindu girl who is married. Her natural guardian is no longer her father but her husband. A husband who is a minor can be the guardian of his minor wife. No other person can be appointed as the guardian of Poonam, unless we find that Jitender is unfit to act as her guardian for reasons other than his minority. We also have to give due weight and consideration to the preference indicated by Poonam. She has refused to live with her parents and has categorically expressed her desire and wish to live with her husband, Jitender. Coming to Poonam's welfare which is of paramount importance, we are of the view that her welfare would be best served if she were to live with her husband. She would get the love and affection of her husband. She would have the support of her in-laws who, as we have mentioned earlier, welcomed her. She cannot be forced or compelled to continue to reside at Nirmal Chhaya or some other such institution as that would amount to her detention against her will and would be violative of her rights guaranteed under article 21 of the Constitution. Neetu Singh's case (supra) is a precedent for this. Sending her to live with her parents is not an option as she fears for her life and liberty.â??

12. In the present case, though the issue in hand is not the validity of the marriage but the fact is that the petitioners are seeking protection of life and

liberty as envisaged under Article 21 of the Constitution of India.

13. Article 21 of the Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of

his life and personal liberty except as per the procedure established by law.

14. In the present case no doubt petitioner No.1 is minor and is not of marriageable age, however, the Court cannot shut its eyes to the fact that the

apprehension of the petitioners needs to be addressed. Merely because petitioner No.1 is not of marriageable age she cannot possibly be deprived of

the fundamental rights as envisaged in the Constitution of India.

15. In view of the above discussion and without expressing any opinion with regard to the veracity of the contents of the petition and the submission

made by learned counsel for the petitioners, the present petition is disposed of with a direction to the Senior Superintendent of Police, Fazilka

(respondent No.2) to decide the representation of the petitioners dated 02.07.2020 (Annexure -4) and take necessary action as per law.

16. It is, however, made clear that this order shall not, in any manner, be construed as an expression of the opinion on the veracity of the statement

made by the petitioners or the validity of the marriage and shall have no effect on any other civil or criminal proceedings, if any,

instituted/pending against them.