
(2008) 03 P&H CK 0035
In the Punjab And Haryana At Chandigarh

Baljit Kaur and Another

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Hindu Marriage Act, 1955 — Section 15, 5, 8
Special Marriage Act, 1954 — Section 15

Citation : (2008) 3 CivCC 545 : (2008) 2 DMC 861 : (2008) 151 PLR 326 :
(2008) 3 RCR(Civil) 109

Hon'ble Judges : Sabina, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—In Smt. Seema Vs. Ashwani Kumar, Hon"ble the Supreme Court has issued comprehensive directions to the States and the Central Government to take various steps for making the registration of marriages of persons belonging to all religions as compulsory. The reason for issuance of such directions have been recorded in para 15 of the judgment. It has been pointed out that if the record of marriage is kept then, to a large extent, the disputes concerning solemnization of marriages between two persons, are avoided. It would also rescue the woman because non-registration of marriages affects the woman to a greater measure. Registration of marriage furnishes evidence of marriage having been taken place and would provide a rebuttable presumption to that effect. The registration of marriage has a great evidentiary value in the matter of custody of children, right of children born from the wedlock of two persons whose marriage is registered and the age of parties to the marriage. It was for all the aforementioned reasons that Hon"ble the Supreme Court found it in the interest of the society if marriages are made compulsorily registrable. The clue for such a registration has also been provided by Section 8 of the Hindu Marriage Act, 1955 (for brevity "the Act") when it uses the expression "for the purpose of facilitating the proof of Hindu Marriage". It was for the aforementioned reason that in para 18 , Hon"ble the Supreme Court has issued

the following directions:

(i) The procedure for registration should be notified by respective States within three months from today. This can be done by amending the existing rules, if any, or by framing new rules. However, objections from members of the public shall be invited before bringing the said rules into force. In this connection, due publicity shall be given by the States and the matter shall be kept open for objections for a period of one month from the date of advertisement inviting objections. On the expiry of the said period, the State shall issue appropriate notification bringing the rules into force,

(ii) The officer appointed under the said rules of the States shall be duly authorised to register the marriages. The age, marital status (unmarried, divorce) shall be clearly stated. The consequence of non-registration of marriages or for filing false declaration shall also be provided for in the said rules. Needless to add that the object of the said rules shall be to carry out the directions of this Court.

(iii) As and when the Central Government enacts a comprehensive statute, the same shall be placed before this Court for scrutiny.

(iv) Learned counsel for various States and Union Territories shall ensure that the directions given herein are carried out immediately.

2. The aforementioned directions have not yet been complied with by States of Punjab and Haryana as is evident from the judgment of Hon'ble the Supreme Court in Smt. Seema Vs. Ashwani Kumar, . The matter is pending and being monitored by Hon'ble the Supreme Court. Be that as it may.

3. We have pre-faced this judgment with the aforementioned observation because the prayer made by the petitioners in the instant petition is that a direction be issued to the Registrar of Marriages-cum-Tehsildar, Garhshankar-respondent No. 2 to register their marriage under the Act. Petitioner No. 1-Baljit Kaur Boparai is 21 years old as she was born on 28.2.1986. Petitioner No. 2 is to attain the age of 21 years on 27.5.2008 as his date of birth is 28.5.1987. The petitioners are stated to have solemnized their marriage on 20.1.2008 by performing Anand Karaj Ceremony as per Sikh rites. It was an arranged marriage and solemnized with the consent of their parents. A photocopies of each of birth certificates as well as marriage certificate have been placed on record (Annexures P-1 to P-3). It is further case of the petitioners that petitioner No. 1 studied up to Graduation level and she has also qualified "IELTS" examination, which makes her eligible to study abroad i.e. Australia. She has taken admission in Unique International College, Level 1, 60 South Street Granville, NSW Australia and classes are to commence from 31.3.2008. Petitioner No. 2- Parminder Singh has studied up to 10+2 standard and has acquired skill in Computer Application Course. He has to accompany his wife to Australia. The necessary certificates showing the admission and passing of IELTS examination have been placed on record (Annexures P-4 to P-6).

4. Both of them applied to the Registrar of Marriages-cum-Tehsildar, Garhshankar-respondent No. 2 for registration of their marriage. However, he has refused to register the marriage of the petitioners only on the ground that petitioner No. 2 has not completed 21 years of age. As already noticed, petitioner No. 2 would attain the age of 21 years on 27.5.2008. The petitioners have claimed that they are major and their marriage is not void as per the Act.

5. In reply to the notice of show cause, learned State counsel has submitted that unless petitioner No. 2 has attained the age of 21 years, the marriage cannot be registered as the bridegroom is required to be of 21 years of age as per provisions of Section 5(iii) of the Act. According to her, petitioners cannot seek a direction to the Registrar of Marriages-cum-Tehsildar, Garhshankar-respondent No. 2 without fulfilling the necessary conditions of solemnization of marriage.

Faced with the aforementioned situation Mr. B.S. Sodhi, learned Counsel for the petitioners has submitted that the petitioners shall apply for registration of their marriage on attaining the age of 21 years i.e. after 27.5.2008 and thereafter no objection would be raised by the Registrar of Marriages-respondents No. 2 on the ground that petitioner No. 2 is below 21 years of age.

6. After hearing learned Counsel for the parties, we are of the view that the modified prayer made by the learned Counsel for the petitioners deserves to be accepted."As per Section 15 of the Special Marriage Act, 1954, any marriage may be registered by a marriage officer provided certain specified conditions are fulfilled. Section 15 of the Special Marriage Act, 1954 lays down the following conditions:

- (a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;
- (b) neither party has at the time of registration more than one spouse living;
- (c) neither party is an idiot or a lunatic at the time of registration;
- (d) the parties have completed the age of twenty-one years at the time of registration;
- (e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

- (f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

(Emphasis added)

7. A perusal of the aforementioned conditions makes it obvious that the parties

are required to have completed the age of 21 years at the time of registration of their marriage. Therefore, the prayer made by the petitioner that a new application shall be filed on or after 27.5.2008 for registration of petitioners' marriage, deserves to be accepted. Accordingly a direction deserves to be issued to respondent No. 2 to register the marriage of the petitioners, if any such application is made on or after 27.5.2008. 9. The aforementioned course has been adopted for the reason that the compulsory registration of marriages is to be encouraged albeit within the four corners of law. As a sequel to the above discussion, this petition is disposed of with a direction to respondent No. 2 to register the marriage of the petitioners, if any application is made on or after 27.5.2008. Respondent No. 2 shall not refuse to register their marriage on the ground that they had solemnized their marriage when one of the spouse was less than 21 years of age.

A copy of this order may be given dasti on payment of usual charges.