

**(2021) 04 P&H CK 0026**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Writ Petition No. 44 Of 2021**

Komalpreet Kaur And Another

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

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**Date of Decision : 07-04-2021**

**Acts Referred:**

Prohibition Of Child Marriage Act, 2006, — Section 3, 5(iii), 9, 11, 15  
Hindu Marriage Act, 1955 — Section 18  
Constitution Of India, 1950 — Article 21

**Citation : (2021) 04 P&H CK 0026**

**Hon'ble Judges : Amol Rattan Singh, J**

**Bench : Single Bench**

**Advocate : Anupam Bhardwaj, Sandeep Singh Deol, Amit Arora**

**Final Decision : Allowed**

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## **Judgement**

Amol Rattan Singh, J

Case heard by video conferencing.

On 06.01.2021, the following order had been passed by this court:-

"Case heard by video conferencing.

By this petition, the petitioners seek protection of life and liberty at the hands of respondents no. 4 to 8, upon them having married each other (as contended) against the wishes of the said respondents, on 29.12.2020.

Learned counsel for the petitioner wishes to rely upon a judgment of this court (co-ordinate Bench), in Priyapreet Kaur and another vs. State of Punjab and others (CRWP No. 10828-2020), decided on 23.12.2020, to submit that despite Section 15 of the Prohibition of Child Marriage Act, 2006, stipulating that all offences punishable under the provisions of that Act are cognizable offences, the petitioners cannot be arrested and that no proceedings under the provisions of that Act would lie against them.

Notice of motion.

On the asking of the court, Mr. Ramdeep Partap Singh, DAG, Punjab, accepts notice on behalf of respondents no. 1 to 3.

A copy of the petition be emailed to learned State counsel by learned counsel for the petitioner today itself.

Adjourned to 21.01.2021.

Respondents no. 4 to 8 to be served by way of normal as well as DASTI process by the next date of hearing.

(It is however made clear that service of notice by DASTI process shall be effected while taking all precautions as are necessary during this period of the COVID-19 pandemic, including distancing and wearing of mask etc.).

Learned counsel for the petitioners would specifically address arguments as to whether Section 15 of the aforesaid Act, has been duly noticed and dealt with in the said judgment, since he has sent it only by way of a 'Whatsapp communication' to the Reader of this court and it is not on record otherwise.

In the meanwhile, though proceedings under the provisions of the Prohibition of Child Marriage Act, 2006, shall not remain stayed, it is directed that the petitioners be not arrested (with a female in any case prohibited from being arrested in view of the proviso to Section 11 of the said Act), and with it otherwise to be ensured that since protection of life and liberty (as per law) is a fundamental right enshrined in under Article 21 of the Constitution of India, the life and liberty of the petitioners shall be duly protected."

Thereafter, on 16.02.2021, the following order had been passed (after reproduction of the order passed on 06.01.2021):-

"Thereafter, as recorded in the order dated 21.01.2021, learned counsel had actually relied upon a judgment of the Supreme Court in Hardev Singh v. Harpreet Kaur and others (CRA no.1331 of 2013, decided on 07.11.2019), with learned counsel for respondents no.4 to 8 having sought time to try and distinguish the said judgment.

Today Mr. Arora very fairly submits that he would not be able to distinguish the said judgment.

It is therefore necessary to notice here that in the said judgment, first the Supreme Court has referred to Section 9 of the Prohibition of the Child Marriage Act, 2006, which reads as follows:-

"9. Punishment for male adult marrying a child.-Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both."

Thereafter, after going into the scheme of the Act of 2006, it was held as follows:-

"3.8. Section 9 of the 2006 Act must be viewed in the backdrop of this gender dimension to the practice of child marriage. Thus, it can be inferred that the intention behind punishing only male adults contracting child marriages is to protect minor young girls from the negative consequences thereof by creating a deterrent effect for prospective grooms who, by virtue of being above eighteen years of age are deemed to have the capacity to opt out of such marriages. Nowhere from the discussion above can it be gleaned that the legislators sought to punish a male between the age of eighteen and twentyone years who contracts into a marriage with a female adult. Instead, the 2006 Act affords such a male, who is a child for the purposes of the Act, the remedy of getting the marriage annulled by proceeding under Section 3 of the 2006 Act. Hence, male adults between the age of eighteen and twentyone years of age, who marry female adults cannot be brought under the ambit of Section 9, as this is not the mischief that the provision seeks to remedy.

3.9. Our views are supported by the marginal note of Section 9, which reads "Punishment for male adult marrying a child". It is well settled that where any ambiguity exists with regard to the interpretation of a legislative provision, the marginal note can be used in aid of construction, having regard to the object of the legislation and the mischief it seeks to remedy.

In view of the above, the words "male adult above eighteen years of age, contracts a child marriage" in Section 9 of the 2006 Act should be read as "male adult above eighteen years of age marries a child".

4. Having regard to the above discussion, Section 9 of the 2006 Act does not apply to the present case at all. By way of abundant caution, we wish to clarify that we are not commenting on the validity of marriages entered into by a man aged between eighteen and twenty one years and an adult woman. In such cases, the man may have the option to get his marriage annulled under Section 3 of the 2006 Act, subject to the conditions prescribed therein."

That being so, with petitioner no.1 in the present case, i.e. the girl, admittedly being above the age of 18 years even as per respondents no.4 to 8, i.e. her parents and relatives, simply because petitioner no.2 is below the legally marriageable age for males (as per the Act of 2006 , as also as per the provisions of the Hindu Marriage Act, 1955), obviously Section 9 of the Act of 2006 cannot operate to take him into custody, or to hold that he has committed any cognizable offence.

However, whether or not the petitioners are liable to be prosecuted in terms of Section 18 of the Act of 1955 would be something learned counsel for the parties would need to address arguments on.

Of court it is to be observed by this court that though what has been held by their Lordships in the context of Section 9 of the Act of 2006, may seem to apply

even to an offence punishable under Section 18 of the Act of 1955, (inasmuch as its application to Section 5 (iii) of that Act is concerned), however, that issue not having been gone into by the Supreme Court, with it obviously not having been brought out in the petition before that Court, in my opinion, counsel for the parties would need to address arguments in that regard.

Adjourned to 03.03.2021.

Interim order to continue."

Today learned counsel for the petitioners points to the second part of Schedule I annexed with the Code of Criminal Procedure 1973, and points out that if any offence is committed (other than under the provisions of the IPC), as carries a maximum imprisonment of less than 3 years, it would be a non-cognizable and bailable offence.

Section 18 of the Hindu Marriage Act, 1955, reads as follows:-

18. Punishment for contravention of certain other conditions for a Hindu marriage.-Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv), 7 [and (v)] of section 5 shall be punishable- (a) in the case of contravention of the condition specified in clause (iii) of section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both.]

(b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both

In the present case, petitioner no.2 being below marriageable age for males, i.e. he is less than 21 years of age, but with petitioner no.1 being above the legally marriageable age for females, with her being above 18 years of age, as is not denied by learned counsel appearing for respondent no.4, i.e. the father of the girl, as already stated in the last order in terms of the judgment of the Supreme Court in "Hardev Singh vs. Harpreet Kaur and others", 2020 (1) RCR (Crl.) 238, no offence punishable under the provisions of the Prohibition of Child Marriage Act, 2006, would be made out; and the offence punishable under the provisions of Section 18 of the Act of 1955, being in the context of clause (iii) of Section 5 of the said Act, for the violation of which a maximum punishment of 2 years imprisonment has been prescribed, obviously it is a non-cognizable offence in terms of the aforesaid provision of the Cr.P.C.

That being so, with there there being no cognizable offence made out against the petitioners, they would be given due protection of life and liberty in case of any threat thereto, by the respondent State, as already stated (which of course in any case is a fundamental right enshrined in Article 21 of the Constitution of India); and if any competent person is aggrieved of the commission of any offence punishable under Section 18 of the Act of 1955, an appropriate remedy

as per law would be available to such person, with no comment made thereupon by this court.

The petition is thus allowed.