
(2022) 11 JH CK 0054

In the Jharkhand High Court

Case No : Criminal Miscellaneous Petition No. 1171 Of 2022

Md. Sonu @ Sonu

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 25-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 21
Indian Penal Code, 1860 — Section 120B, 366A

Citation : (2022) 11 JH CK 0054

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Anuj Kumar Trivedi, Prem Mardi, Abdullah Umar, Saman Ahmad, Zaid Imam

Final Decision : Allowed/Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Anuj Kumar Trivedi, learned counsel for the petitioner, Ms. Saman Ahmad, learned counsel for opposite party no.2 and Mr. Zaid Imam, learned counsel for opposite party no.3.

2. This petition has been filed for quashing the entire criminal proceeding in connection with Jugsalai P.S. Case No.07 of 2022 registered under Section 366-A and 120-B of the Indian Penal Code, pending in the court of the learned Judicial Magistrate, 1st Class-VIII, Jamshedpur.

3. Learned counsel for the petitioner submits that opposite party no.3 is the father of girl i.e. opposite party no.2 and under misconception, he has lodged the FIR alleging that his daughter is missing. He further submits that good sense has prevailed between the parties and marriage of petitioner along with opposite party no.2 has been accepted and Nikahnama contained in Annexure-2 of the supplementary affidavit filed on behalf of the petitioner, has been brought on record.

4. Learned counsel for opposite party no.2 submits that marriage has been solemnized and both the families have accepted the marriage and in that view of the matter, entire criminal proceeding may be quashed.

5. Learned counsel for opposite party no.3, who is father of opposite party no.2 submits that the counter affidavit has been filed on behalf of opposite party no.3, wherein, it has been disclosed in paragraph 8 that her daughter has found a right match by Allah grace and there is no other perfect match than the petitioner and he and his wife with open hearts accepts the petitioner as son-in-law.

6. Learned counsel for the petitioner submits that in Muslim law puberty and majority are one and the same and that there is a presumption that a person attains majority at the age of 15 years. It is further contented that a Muslim boy or Muslim girl who has attained puberty is at liberty to marry any one he or she likes and the guardian has no right to interfere.

7. In *Yunus Khan v. State of Haryana & ors.*; [2014(3) RCR (Criminal) 518], it has been noted that the marriage of a Muslim girl is governed by the personal law of the Muslims. Article 195 from the book 'Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla' has also been reproduced in the said decision which Article reads as under:

"195. Capacity for marriage - (1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage.

(2) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians.

(3) A marriage of a Mahomedan who is sound mind and has attained puberty, is void, if it is brought about without his consent.

Explanation - Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years."

8. In view of this judgment, is clear that the marriage of a Muslim girl is governed by the Muslim Personal Law. As per Article 195 from the book 'Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla', the opposite party no.2 is approximately 15 years of age was competent to enter into a contract of marriage with a person of her choice. The petitioner is stated to be more than 24 years of age. Thus, both the petitioner and opposite party no.2 attained marriageable age as defined by Muslim Personal Law. 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 or her life and personal liberty except as per the procedure established by law.

9. In view of the above facts and considering the submissions of the learned counsel appearing for the parties as well as the document as well as Nikahnama and the contention of father of the girl (opposite party no.3) as well as of the girl (opposite party no.2) and also considering the judgment passed in *Yunus Khan*

(supra), to allow to continue the proceedings will amount to abuse of process of law. Accordingly, the entire criminal proceeding in connection with Jugsalai P.S. Case No.07 of 2022, pending in the court of the learned Judicial Magistrate, 1st Class-VIII, Jamshedpur is, hereby, quashed.

10. Accordingly, this petition stands allowed and disposed of.