
(2010) 12 P&H CK 0087

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-35410 of 2010

Neelam Rani and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Hindu Marriage Act, 1955 — Section 5(3)
Penal Code, 1860 (IPC) — Section 363, 364A, 366
Prohibition of Child Marriage Act, 2006 — Section 12, 3

Citation : (2011) 1 RCR(Civil) 636

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Judgement

S.S. Saron, J.—This petition has been filed by the Petitioners u/s 482 of the Code of Criminal Procedure ("Code of Criminal Procedure " - for short) for directing the official Respondents No. 1 to 4 to protect the life and liberty of the Petitioners and not to interfere in their peaceful married life at the behest of Respondents No. 5 to 7 who are the father, mother and brother respectively of Petitioner No. 1.

2. The Petitioners had known each other for the last 3 years and their relationship came to the knowledge of their parents. The date of birth of Petitioner No. 1 it is submitted is 30.6.1992. Therefore, she is more than 18 years of age. An affidavit (Annexure P1) has been filed by Petitioner No. 1 deposing therein that her date of birth is 30.6.1992. It is submitted by learned Counsel for the Petitioners that Petitioner No. 1 had left her parental home and all her certificates are with her parents (Respondents No. 5 and 6). The date of birth of Petitioner No. 2 is 18.5.1987 and he has deposed an affidavit (Annexure P-2) in this regard. The Petitioners on their own on 29.11.2010 solemnized their marriage amongst themselves at Arya Samaj Sanskar Samiti, Ambala Cantt. A copy of the marriage certificate (Annexure P3) issued by Arya Samaj Sanskar Samiti, Ambala Cantt. and the photographs (Annexure P-4) taken at the time of marriage have been placed on record. It is submitted that the marriage is

perfectly legal and valid. The Petitioners had been trying their level best to persuade their respective families regarding their marriage but could not succeed in getting necessary consent of their parents. The parents (Respondents No. 5 and 6) as also the brother (Respondent No. 7) of Petitioner No. 1 maintained their stubborn attitude being dead against the marriage of Petitioner No. 1 to a boy belonging to another caste. It is submitted that the marriage of Petitioners is against the wishes of the parents of Petitioners. Now the parents (Respondents No. 5 and 6) of Petitioner No. 1 and other relatives want to marry their daughter (Petitioner No. 1) with some other boy. Therefore, the Petitioners are being threatened.

3. The case was taken up on 02.12.2010 and as the case was taken up, Mr. Harshit Jain, Advocate put in appearance on behalf of Respondents No. 5 and 6. He submitted a photostat copy of the page of birth entries of the children born in the month of January, 1993 in village Meond Kalan. It was submitted that the said photocopy was from the Births and Deaths Register maintained by the Municipal Committee, Jakhal Mandi. At Serial No. 15, the date of birth of Neelam Rani (Petitioner No. 1) was mentioned as 30.6.1993. As such, it was submitted that she was less than 18 years of age on the date of her alleged marriage i.e. on 29.11.2010. Therefore, the protection as prayed for according to the learned Counsel for Respondents No. 5 to 7 is not liable to be given.

4. As already noticed, the learned Counsel for the Petitioners had submitted that all the certificates with respect to the age of Neelam Rani (Petitioner No. 1) were with her parents (Respondents No. 5 and 6). Therefore, they may be asked to produce the same. In any case, it was submitted that Neelam Rani (Petitioner No. 1) was more than 16 years of age and therefore, the marriage can not be said to be invalid and she was entitled for protection. Respondents No. 5 and 6 were asked to produce the necessary certificates of the Petitioner No. 1 on the adjourned date.

5. Learned Counsel for Respondents No. 5 and 6 has today produced the original register, the Photostat copy of which was submitted on the last date of hearing i.e. on 02.12.2010. It is also now submitted that the said register is maintained by the Anganwari Workers of Municipal Committee, Meond Kalan and it was not maintained by the Municipal Committee, Jakhal Mandi as was the stand taken by the learned Counsel on the last date of hearing. The register which has been submitted by the learned Counsel in Court today, it is submitted, has been given to the Petitioners on the assurance of the Sarpanch of Meond Kalan. It is also submitted that in view of Section 12 of the Prohibition of Child Marriage Act, 2006, ("2006 Act" for short) the marriage of a minor child is to be void in certain circumstances. Besides, learned Counsel cites *Amninder Kaur and Anr. v. State of Punjab* and Ors. 2010 (1) RCR (Cri.) 261. On the strength of the same, it is submitted that the Petitioners are not entitled for the protection as prayed for.

6. I have given my thoughtful consideration to the matter. The question regarding age of Petitioner No. 1 is not to be gone into the present proceedings

and the same is to be considered in an appropriate proceedings in case the same are initiated. It may however be noticed that Petitioner No. 1 in any case has reached the age of discretion and even if her date of birth is taken to be 30.6.1993 she would be 17 years of age.

7. Both the Petitioners are present in Court and are identified by their counsel. Neelam Rani (Petitioner No. 1) has stated that she has solemnized her marriage with Pawan Kumar (Petitioner No. 2) of her own free will and desire and without any kind of pressure or undue influence. It is also stated that she is happy with her marriage. On the asking of the learned Counsel for Respondents No. 5 and 6 that the parents may be allowed to meet her, she (Petitioner No. 1) has submitted that she does not want to meet them.

8. The question therefore that is to be considered is whether the Petitioners are entitled for directions against the Respondents not to interfere in their peaceful married life particularly at the behest of Respondents No. 5 to 7 who are the parents and brother respectively of Petitioner No. 1 even if the age of the girl is taken to be less than 18 years at the time of marriage.

9. In this regard the Supreme Court in the case of *S. Varadarajan Vs. State of Madras*, held that taking or enticing a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. However, when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is a senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrars Office where they get an agreement to marry registered, and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stretch of imagination be said to have "taken" her out of the keeping of her lawful guardianship, that is the father in the said case. The Himachal Pradesh High Court in *Kamal Singh v. The State of H.P.* 1985(1) Crimes 151 considered the case where there was some intimacy between prosecutrix and the Appellant in the said case and the prosecutrix was willing and active agent in her enticement and she accompanied the accused of her own accord while her parents were asleep. It was held that even though the prosecutrix was below 18 years would not be material. The accused therein was acquitted. The Delhi High Court in *Bhagwan Singh and Ors. v. State and Anr.* 2007 (1) RCR (Cri.) 347 considered a case where a Muslim girl aged 17 years 3 months converted to Hinduism and married the accused. The FIR under Sections 363 and 366 IPC was registered by the father of the girl. It was observed that marriage of such a spouse is neither void nor illegal on account of his or her being less than 18 years but over 15 years of age. In *Rukshana and Anr. v. Govt. of NCT of Delhi and Ors.* 2007(3) RCR (Cri.) 542 (Delhi) a minor girl aged 16

years 6 months had a liking for the accused. Both ran away and got married. They had a son out of the marriage. The FIR for the offences under Sections 363, 364-A and 365 IPC was quashed in the interest of accused, prosecutrix and the child. The Delhi High Court in *Sh. Jitender Kumar Sharma v. State and Anr.* 2010(4) RCR (Cri.) 20 (Del) (D.B.) where a boy aged 18 years and a girl aged 16 years who had a liking for each other fled away from their homes and married according to Hindu rites, held that the marriage was not void though it was in contravention of Section 5(iii) of the Hindu Marriage Act 1955. It was held that a minor girl marrying a minor boy, her natural guardian is no longer her father but husband and her custody was given to the husband. A minor husband, it was observed, can be a guardian of his minor wife. A minor, it was held, is competent to act as a guardian of his own wife or child. Where custody of minor is concerned the prime and often the sole consideration or guiding principle is the welfare of the minor. The girl in the said case was given freedom to go with her husband and reside with him.

10. Learned Counsel appearing for Respondents No. 5 and 6 as already noticed has placed strong reliance on *Amninder Kaur and Anr. v. State of Punjab and Ors.* (supra). The said case relates to a run away marriage where a minor girl aged 16 years and 2 months had run away and got married. It was held that the marriage is void and the couple was not entitled to the protection of police. In the said case it was held that in view of the provisions of the 2006 Act marriage was void because Petitioner No. 2 in the said case had enticed Petitioner No. 1 therein from the lawful keeping of Respondent No. 4 therein and the Court in the garb of providing police protection cannot declare a void marriage as valid. Therefore, the said case was one where the minor had been enticed away and kept away from the lawful guardianship. In the facts and circumstances, it was held that the marriage would be void. The same in fact is in consonance with the provisions of Section 12 of the 2006 Act, which provides the marriage of a minor child to be void in certain circumstances. It is inter alia provided therein that where a child, being a minor is taken or enticed out of the keeping of the lawful guardian, such marriage shall be null and void. Therefore, in the case of enticement of a minor out of the keeping of the lawful guardian, the marriage would be void. However, as has already been noticed in the present case, it is not shown that Petitioner No. 1 has been enticed by Petitioner No. 2 inasmuch as both the Petitioners are present in Court and Petitioner No. 1 has stated that she has gone with Petitioner No. 2 of her own free will. Therefore, Petitioner No. 1 having gone on her own from her parental home and she having not been enticed away it cannot be said that her marriage in any manner is void.

11. The contentions of the learned Counsel for Respondents No. 5 and 6 that the marriage is void in view of the provisions of Section 12 of the 2006 Act is not tenable. As already noticed that the said provisions would not apply as it is not a case where Petitioner No. 1 has been taken or enticed out of the keeping of lawful guardian or by force compelled, or by deceitful means induced to go from any place or is sold for the purpose of marriage. Even otherwise, in terms of

Section 3 of the aforesaid 2006 Act, Child marriage is voidable at the option of contracting party being a child. It is provided that every child marriage, whether solemnized before or after the commencement of this Act i.e. the 2006 Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage. Therefore, it is at the option of the child i.e. the Petitioner No. 1 in the present case that the marriage is voidable and it cannot per se be said to be void. Therefore, the provisions of the 2006 Act though restrain solemnization of child marriage yet it does not declare them be void or invalid on mere violation of the provisions contained therein, although it may be punishable under the law. The marriage at the most may be a voidable one which can be got declared as such on a petition filed u/s 3 of the 2006 Act.

12. Neelam Rani (Petitioner No. 1) has of her own free will married Petitioner No. 2. Even today, she has stated in Court that she wants to live with Petitioner No. 2. Besides, in any case she has attained the age of discretion. Therefore, the marriage may be voidable at the option of the contracting party who was a child but the same cannot per se be said to be void. In fact this Court in exercise of its inherent jurisdiction u/s 482 Code of Criminal Procedure is not to go into the validity or otherwise of the marriage that has been solemnized by the Petitioners amongst themselves for that is the domain of the of the matrimonial Court of competent jurisdiction and that to after following the procedure provided for declaring the marriage to be valid or void. The said procedure cannot be short-circuited or circumvented by ready resort to the provisions of Section 482 Code of Criminal Procedure The settled position is that when a statute makes provision for exercise of a power, that can be exercised only in the manner provided and all other manner of its exercise are forbidden. Therefore, this Court in exercise of its inherent jurisdiction would not be in a position to go into the validity or otherwise of the marriage between the Petitioners or declare it to be valid, void or voidable. This is the domain of the competent Court after following the procedure under the 2006 Act. The parties in the circumstances would be at liberty to avail their other remedies in accordance with law. However, insofar as the present case is concerned, the same is for providing protection and is disposed of with a direction that in case the Petitioners approach Respondents No. 2 and 3 setting out their grievances as are mentioned herein, the same shall be duly considered and looked into by any of them in accordance with law.