
(2013) 05 P&H CK 0122

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-14758 of 2013

Nijma Kumari and Another

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Majority Act, 1875 — Section 3

Citation : (2013) 05 P&H CK 0122

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : Sunil Kumar Sharma, for the Appellant;

Judgement

Mahesh Grover, J.—This is a petition u/s 482 of the Code of Criminal Procedure praying for directions to respondents No. 1 to 3 to protect their life and liberty which is alleged to be in danger at the hands of respondents No. 4 and 5 on account of their having got married against their parental consent. Learned counsel for the petitioners contends that both the petitioners are major.

2. Even though this court is disinclined to entertain and to go into such allegations, but at the same time it cannot be oblivious to the fact that because of social friction and sectarian differences such incidents are not entirely unheard of and prima facie the case also appears to be covered by the observations of Supreme Court in Fiaz Ahmed Ahanger & Ors. v. State of J & K 2009(3) R.A.J. 692, which are as under:

In such cases of inter-caste or inter-religion marriage the Court has only to be satisfied about two things:

(1) that the girl is above 18 years of age, in which case, the law regards her as a major vide Section 3 of the Indian Majority Act, 1875. A major is deemed by the law to know what is in his or her welfare.

(2) The wish of the girl.

In the circumstances, we direct that nobody will harass, threaten or commit any acts of violence or other unlawful act on the petitioner, Chanchali Devi/Mehvesh Anjum and the petitioner's family members and they shall not be arrested till further orders in connection with the case in question. If they feel insecure, they can apply to the police and, in such event, the police shall grant protection to them.

3. Further, the Delhi High Court in Vivek Kumar @ Sanju and another v. The State & another, Crl. M.C. No. 3073-74/2006 decided on 23.2.2007 observed as under:

There is no law which prohibits a girl under 18 years from falling in love with someone else. Neither falling in love with somebody is an offence under IPC or any other penal law. Desiring to marry her love is also not an offence. A young girl, who is in love has two courses available to her - one is that she should marry with the consent of her parents after obtaining the consent of her parents. If her parents do not agree to persuade them or to wait for attaining the age of majority and then exercise her right as a major to marry the person of her own choice. However, this is possible only when the house of her parents where she is living has congenial atmosphere and she is allowed to live in peace in that house and wait for attaining age of majority. This might have been the reason in the mind of petitioner No. 2 when she told her father that she was in love and wanted to marry Sanju, but the response of father when daughter confided in him, created the fear in the mind of petitioner No. 2. Her father slapped her and told that her action would malign the religion and bring danger to the religion. He even threatened to kill her and marry her off to some rich person. When once a such a threat is given to a girl around 17 years of age, who is in love, under such circumstances she has a right to protect her person and feelings against such onslaught of her relatives even if the onslaught is from her own parents. Right to life and liberty as guaranteed by the Constitution is equally available to minors. A father has no right to forcibly marry off his daughter, who is below 18 years against her wishes. Neither he has right to kill her, because she intends to marry out of her religion. If a girl around 17 years of age runs away from her parents house to save herself from the onslaught of her father or relatives and joins her lover or runs away with him, it is no offence either on the part of the girl or on the part of boy with whom she ran away and married.

4. In view of this, the petition is disposed of with a direction to respondent No. 2 to look into the allegations as contained in the petition personally and take necessary steps in accordance with law if the situation so warrants.

5. This order shall not be construed to be conferring the legitimacy or authenticity to the factum of marriage having been performed as well as the age, as the Court is clearly deprived of any means to determine the aforesaid facts. Copy of the petition along with a copy of this order be sent to respondent No. 2.