
(2021) 01 P&H CK 0364

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 759 Of 2021 (O&M)

Priyanka And Another

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 27-01-2021

Acts Referred:

Hindu Marriage Act, 1955 — Section 5(iii)
Constitution Of India, 1950 — Article 21, 226

Citation : (2021) 01 P&H CK 0364

Hon'ble Judges : Alka Sarin, J

Bench : Single Bench

Advocate : Arun Sharma

Final Decision : Disposed Of

Judgement

Alka Sarin, J

Heard through video conferencing.

The present Criminal Writ Petition has been filed under Article 226 of the Constitution of India for enforcement of fundamental rights of the

petitioners seeking protection of their life and liberty as enshrined under Article 21 of the Constitution of India.

In brief, the relevant facts as stated in the petition are that both the petitioners are major, the date of birth of petitioner No.1 being 28.08.2002 and that

of petitioner No.2 being 12.11.2000 as per their Aadhar Cards, Annexures P-1 and P-2, respectively. Though the petitioner No.2 has attained majority

but is not of marriageable age.

It has been stated by the petitioners that they belong to different castes and fell in love with each other about one year back. The parents of petitioner

No.1 were not happy with her relationship with petitioner No.2 and, as such, both the petitioners ran away from their respective homes on 18.01.2021

and solemnized their marriage on 19.01.2021. Thereafter, respondent Nos.4 to 8, who are parents, uncle and brothers of petitioner No.1, started

threatening the petitioners with dire consequences.

Learned counsel for the petitioners contends that the life and liberty of the petitioners is in grave danger at the hands of respondent Nos.4 to 8. It is

further contended that the petitioners have also moved a representation dated 19.01.2021 (Annexure P-4) to the Superintendent of Police, Jind

(respondent No.2). However, no action has been taken thereon. The counsel for the petitioners would further contend that he limits his prayer in the

present petition and would be satisfied at this stage if directions are issued for deciding the said representation in accordance with law.

Notice of motion.

On the asking of the Court, Mr. Naveen Singh Panwar, DAG, Haryana has joined the session through video conferencing and accepts notice on

behalf of respondent Nos.1 to 3. Since the matter is not being decided on merits, the service on other respondents is dispensed with.

Heard learned counsel for the parties.

In the present case this Court, without expressing any opinion on the validity of the marriage of the petitioners, needs to consider as to whether the

apprehension of the petitioners needs to be addressed.

This Court is aware of the fact that the date of birth of petitioner No.1 is 28.08.2002 and she is major and of marriageable age. Date of birth of

petitioner No.2 is 12.11.2000. Though he is major, but he is not yet of marriageable age as envisaged in Section 5(iii) of the Hindu Marriage Act, 1955.

A Division Bench of the Delhi High Court in the case of Jitender Kumar Sharma V/s State and another reported as 2010(4) RCR (Criminal)

20, dealt with the complex issue regarding the marriage between two people ineligible to be married as envisaged under Section 5(iii) of the Hindu

Marriage Act, 1955. In para 15, it was held by the Division Bench as under:-

15. Returning to the facts of the present case, we find that, merely on account of contravention of clause (iii) of section 5 of the HMA, Poonam's

marriage with Jitender is neither void under the HMA nor under the Prohibition of Child Marriage Act, 2006. It is, however, voidable, as now all child

marriages are, at the option of both Poonam and Jitender, both being covered by the word 'child' at the time of their marriage. But, neither seeks to exercise this option and both want to reinforce and strengthen their marital bond by living together. We also find that stronger punishments for offences under the Prohibition of Child marriage Act, 2006 have been prescribed and that the offences have also been made cognizable and non-bailable but, this does not in any event have any impact on the validity of the child marriage. This is apparent from the fact that while the legislature brought about these changes on the punitive aspects of child marriages it, at the same time brought about conscious changes to the aspects having a bearing on the validity of child marriages. It made a specific provision for void marriages under certain circumstances but did not render all child marriages void. It also introduced the concept of a voidable child marriage. The flip-side of which clearly indicated that all child marriages were not void. For, one cannot make something voidable which is already void or invalid.â??

Though the issue in hand is not with regard to the validity of the marriage, but the fact is that the petitioners are seeking protection of life and liberty as envisaged under Article 21 of the Constitution of India.

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 her or his life and personal liberty except as per the procedure established by law. In the present case, no doubt petitioner No.2 is not of marriageable age as envisaged under Section 5(iii) of the Hindu Marriage Act, 1955.

However, this Court cannot shut its eyes to the fact that the apprehension of the petitioners needs to be addressed. Merely because petitioner No.2 is not of marriageable age, the petitioners cannot possibly be deprived of their fundamental rights as envisaged in the Constitution of India.

In view of the above and without expressing any opinion with regard to the veracity of the contents of the petition and the submissions made by learned counsel for the petitioners, the Superintendent of Police, Jind (respondent No.2) is directed to decide the representation dated 19.01.2021 (Annexure P-4) and take necessary action as per law.

It is, however, made clear that this order shall neither be construed as an expression of opinion on the veracity of the contents of the present petition

nor as a stamp of this Court on the validity of the alleged marriage performed by the petitioners and shall have no effect on any other civil or criminal proceedings, if any, instituted/pending against them.

Disposed off accordingly.