
(2011) 03 P&H CK 0253

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-4097 of 2011 (O and M)

Sanju and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Hindu Marriage Act, 1955 — Section 22B, 5
Prohibition of Child Marriage Act, 2006 — Section 12, 3

Citation : (2011) 03 P&H CK 0253

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Judgement

Ritu Bahri, J.

Crl. Misc. No. 14014 of 2011

1. Criminal miscellaneous is allowed. Reply of Respondents No. 4 to 6 is taken on record.

Crl. Misc. No.M-4097 of 2011

2. This petition u/s 482 of the Code of Criminal Procedure is for directing the official Respondents to provide police protection to the Petitioners and not to interfere in their married life in any manner. It is also prayed that a direction be also given to the official Respondents not to register any criminal case against the Petitioners and family members of Petitioner No. 1.

3. Both the Petitioners are major, uneducated and respectable adults. The date of birth of Petitioner No. 1 is 12.7.1988 and he is more than 22 years. He is major and in this regard the affidavit sworn in by him regarding his date of birth and copy of ration card is attached as Annexure- P1. Petitioner No. 2 is also a major. Her date of birth is 26.2.1992 and she is more than 18 years old. An affidavit duly sworn by Petitioner No. 2 regarding her date of birth is attached as Annexure P2. All documents relating to date of birth proof of Petitioner No. 2 are

in the possession of Respondents No. 4 to 6 and she is not able to produce the documents at the stage of filing of this petition.

4. Learned Counsel for the Petitioners submits that the Petitioners were in love with each other and they tried to convince their parents about their intention to marry each other. The parents of Petitioner No. 1 agreed to the proposal and both the Petitioners and the parents of Petitioner No. 1 requested the private Respondents to agree to the marriage proposal of the Petitioners but they did not agree. In the above circumstances, the Petitioners have got married with their own sweet will and against the wishes of the private Respondents, who are parents and brother of Petitioner No. 2. On 7.2.2011 in Arya Samaj and Vedic Welfare Society, Chandigarh, Petitioner No. 2 converted her religion from Muslim (Islam) to Hindu with her own sweet will. Certain photographs showing the marriage ceremony being performed by the Petitioners are enclosed as Annexure P3 with this petition. Copy of the Marriage Certificate is attached as Annexure P4 issued by Arya Samaj and Vedic Welfare Society, Chandigarh, Sector 22-B, Chandigarh. The Petitioners have entered into the marriage secretly and are moving from one place to another out of fear or false implication at the instance of private Respondents. Respondents No. 4 to 6 are issuing continuous threats to the Petitioners. The Petitioners have made an application to the Superintendent of Police, Yamuna Nagar, for protection of life and liberty on the ground that they entered into marriage according to their own sweet will (Annexure P5). Family of Petitioner No. 1 is being harassed and humiliated by the private Respondents. The Petitioners contend that they are innocent and are entitled to police protection.

5. On notice, reply has been filed by Respondents No. 4 to 6. The categorical stand of the Respondents is that the affidavit filed by Petitioner No. 2 stating her date of birth is false. As per the family register, the correct date of birth of Petitioner No. 2 is 16.10.1994. Copy of the family register is enclosed as Annexure R-4/1 with the written statement where Petitioner No. 2's name is shown as Rubani not Simran. Since Petitioner No. 2 is a minor, she is not entitled to the protection as no legal marriage has been performed between the Petitioners. The marriage between Petitioner No. 1, who is a Hindu, and Petitioner No. 2, who is a Muslim, cannot be solemnized in an Arya Vedic society.

6. The allegation against Petitioner No. 1 is that he has run away with the minor girl and is not entitled to any protection from this Court. The private Respondents are the parents and brother of Petitioner No. 2 and they have every right to think of the welfare of their minor child.

7. I have given my thoughtful consideration to the facts of the present case. The question regarding age of Petitioner No. 2 is not necessary to be gone into in the present proceedings as the same is to be considered in proper proceedings if that are initiated. As per the reply filed by the private Respondents and taking the date of birth of the girl as 16.10.1994 she is more than 16 years of age. Both the Petitioners are present in Court and are identified by their counsel. On inquiry by

the Court, Petitioner No. 2 stated that she is 18 years of age and has married of her own sweet will.

8. The question before this Court is that whether the Petitioners are entitled to protection from Respondent Nos. 4 to 6, who are the parents and brother of Petitioner No. 2.

9. The custody of a girl who is minor at the time of marriage came up for consideration before the Delhi High Court in *Sh. Jitender Kumar Sharma v. State and Anr.* 2010 (2) MLJ 496 : 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. In the present case, it is nowhere shown that Petitioner No. 2 has been incited by Petitioner No. 1. Petitioner No. 2 has got married of her own sweet will. Therefore, Petitioner No. 2 having gone from her parental home and having not been incited away, it cannot be said that their marriage is in any manner void. As per Section 12 of the Prohibition of Child Marriage Act, 2006 the marriage of a minor child is to be void in certain circumstances. Since Petitioner No. 2 has married of her own sweet will, her marriage is not void. She has neither been compelled or by deceitful measures induced to marry Petitioner No. 1 or sold for the purpose of marriage. This marriage at the most may be voidable which can be got declared as such on a petition filed u/s 3 of the 2006 Act. The said procedure cannot be short-circuited or circumvented by ready resort to the provisions of Section 482 Code of Criminal Procedure 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 criminal miscellaneous is disposed of with a direction that in case the Petitioners approach Respondents No. 2 and 3 stating that they are being harassed by their parents or relatives, the same shall be duly considered and looked into by any of them in accordance with law.