

In the High Court of Punjab and Haryana at Chandigarh

**CWP No.29048 of 2019 (O&M)
Date of Decision: 04.10.2019**

_____ and another

... Petitioners

Versus

State of Punjab and others

.... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. H.S.Batth, Advocate,
for the petitioners.

Ms. Ambika Sood, DAG, Punjab.

ARUN MONGA, J. (ORAL)

Conflict raised herein is the enforcement of fundamental rights of the petitioners to seek protection of their “life and liberty” as enshrined under Article 21 of the Constitution of India viz-a-viz a conceded violation of Section 5 (iii) of the Hindu Marriage Act, 1955, inasmuch a girl aged 18 years 1 month and boy aged 20 years claim to have married each other having purportedly being in love with each other.

2. Notice of motion at this stage only to the official respondents is being issued. On the asking of the Court, Ms. Ambika Sood, DAG, Punjab accepts notice on behalf of official respondents.

3. Advance copy of the paper book has already been supplied to learned State counsel by the learned counsel for the petitioners.

4. Given the nature of the order being passed, there is no necessity to seek any return by the official respondents or even to serve the private respondents No.4 to 7.

5. Having heard learned counsel for the petitioners, as also the learned State counsel and without going into the merits of the validity of the

marriage, I am of the view that every citizen being entitled to enforcement of fundamental rights as envisaged under Constitution of India, would necessarily entail grant of appropriate protection to the petitioners herein qua their life and liberty as apprehended by them for the reasons stated hereinafter.

6. Facts, as pleaded in the petition, succinctly are that the petitioner No.1, a girl born on 21.08.2001 and petitioner No.2, a boy born on 17.09.1999, though a major, but not of marriageable age, purportedly are in love with each other.

7. Petitioners got married on 30.09.2019 at Panchkula according to Hindu Rites and Ceremonies. Photographs of their marriage have been appended with the petition.

8. Petitioners state that their marriage was accepted by family of petitioner No.2 happily. They also informed the parents of petitioner No.1 about their marriage telephonically and requested them to accept the marriage, on which respondents No. 4 to 7 got angry and threatened the petitioners that they will not allow them to live as husband and wife and on finding an occasion they will kill both of them. Parents of petitioner No.1 also threatened the petitioners to involve them in some false criminal case.

9. In the circumstances, the petitioners approached respondent No.2 (Senior Superintendent of Police, SAS Nagar, Mohali) and submitted a representation dated 30.09.2019 (Annexure P-5) seeking to safeguard their life and liberty, but no action is being taken on the same.

10. The petitioners state that they are living in constant danger as they have every apprehension that private respondents will catch them and carry out their threats. The petitioners are, therefore, running here and there

and unable to find any safe place to live in the absence of protection of their life and liberty. Hence the present writ petition seeking appropriate directions to the official respondents to provide protection qua their life and liberty.

11. As already noted, without expressing any opinion on the merits of the validity of the marriage at this stage, I am of the view that what needs to be addressed is the apprehension of the petitioners based on threat to their life and liberty for the reasons/circumstances as narrated in the petition.

12. Controversy that needs adjudication now is whether an appropriate writ/direction or order is warranted to allay the apprehensions of the petitioners for granting protection to them for enforcement of their fundamental rights under Article 21 of the Constitution of India.

13. I am conscious of the fact that the boy is not of marriageable age even though he is a major. Their marriage, therefore, even if assumed to have taken place according to Hindu Rites is in violation of Section 5 (iii) of the Hindu Marriage Act. Section 5, *ibid* envisages statutory pre-requisites for the consenting parties to solemnize marriage between them. Sub Section (iii) thereof stipulates the minimum ages of a bridegroom and a bride. Section 5 reads as under:-

“Conditions for a Hindu marriage. A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:

(i) neither party has a spouse living at the time of the marriage;

[(ii) at the time of the marriage, neither party

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
*(c) has been subject to recurrent attacks of insanity [***];*
(iii) the bridegroom has completed the age of [twenty-one years] and the bride, the age of [eighteen years] at the time of the marriage;
(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;”

14. A perusal of Section 5, *ibid* leaves no manner of doubt that one of the essential conditions of Hindu Marriage Act is that the bridegroom must be above 21 years and the bride above 18 years. However, at the same time, Section 11 of the Hindu Marriage Act which declares certain marriages, which are in contravention of Section 5 (*supra*), to be void, but precludes a marriage solemnized in contravention of Sub Section (iii) of Section 5, *ibid* from the purview of being regarded as void or invalid.

15. I find support to my above sentiments from a Division Bench judgment rendered by Delhi High Court in case titled as ***Jitender Kumar Sharma Vs. State and Another*** reported as **2001 (7) AD (Delhi) 785**. The relevant whereof is extracted hereinbelow:-

“It is true that one of the conditions of a hindu marriage is that the bride should have completed 18 years age and the bridegroom, 21 years. But, does this mean that a marriage where this twin condition as to ages is not satisfied is, ipso facto, invalid or void? An examination of Section 11 of the HMA would seem to suggest otherwise. The said provision

is as under:-

11.Void marriages- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

Though five conditions have been stipulated in Section 5, only the contravention of three of them, namely, clauses (i) (iv) and (v) would render the marriage to be null and void. Clause (iii) of section 5, which is the condition with regard to the minimum ages of the bride and bridegroom, is conspicuous by its absence. As a result, a hindu marriage solemnized in contravention of clause (iii) of section 5 of the HMA cannot be regarded as a void or invalid marriage. We are not oblivious of section 18 of the HMA which prescribes punishment for contravention of certain conditions for a hindu marriage. It reads as under:-

18. Punishment for contravention of certain other conditions for Hindu marriage.- Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv) and (v) of Section 5 shall be punishable-

a) in the case of contravention of the condition specified in clause (iii) of Section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both;

b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of Section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

c) (***)

But, the fact that punishment has been provided for contravention of the condition specified in section 5 (iii) of the HMA does not mean that the marriage itself is void or invalid. If the legislature had intended that such a marriage would be void or invalid, it could have easily included clause (iii) of section 5 in Section 11 itself. Only clauses (i), (iv) and (v) of section 5 are specifically mentioned in section 11. The only conclusion is that the legislature consciously left out marriages in contravention of the age stipulation in clause (iii) of section 5 from the category of void or invalid marriages.

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Before we proceed further, under Hindu law there are essentially two kinds of marriages-void marriages or valid marriages. The latter category has a sub-category of voidable marriages. A marriage in contravention of clause (iii) of section 5, as we have seen above, does not fall in the category of void marriages specified in section 11 of the HMA nor does it fall in the category of voidable marriages specified in section 12. Consequently, by the process of elimination, it would be a valid marriage. Of course, the marriage may be dissolved through a decree of divorce, but, that would have to be on the grounds specified in section 13 of the HMA. Interestingly, section 13 (2) (iv) enables a 'wife' to petition for dissolution of her marriage on the ground:-

(iv)that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

What does this show? It shows that even a marriage of a minor girl below the age of fifteen is regarded as valid and can only be dissolved on her petition, provided she repudiates the marriage between the time she is 15 years old and 18 years

old.”

16. Reverting to the present case, in light of the aforesaid background and the judgment rendered by Delhi High Court, it appears from the documents appended herein that the petitioners have not solemnized a valid marriage as per Sub Section (iii) of Section 5 of the Hindu Marriage Act and may be required to satisfy the validity of their marriage before an appropriate Forum in the event of same being put to challenge.

17. The issue in hand, however, is not marriage of the petitioners, but the deprivation of fundamental right of seeking protection of life and liberty. I have no hesitation to hold that Constitutional Fundamental Right under Article 21 of Constitution of India stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.

18. It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. The mere fact that the petitioner No.2 is not of marriageable age in the present case would not deprive the petitioners of their fundamental right as envisaged in Constitution of India, being citizens of India.

19. In view of the discussion above, the Senior Superintendent of Police, SAS Nagar, Mohali is directed to verify the contents of the petition particularly the threat perception of the petitioners and thereafter provide necessary protection qua their life and liberty, if deemed fit.

