IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Writ Petition No.5212 of 2021
Date of Decision: June 10, 2021

Daya Ram & another

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Lupil Gupta, Advocate,
for the petitioners.

Mr. Sukhdeep Parmar, DAG, Haryana.

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MANOJ BAJAJ, J.

The petitioners, who are yet to attain the marriageable age, have approached this court by way of this criminal writ petition under Article 226 Constitution of India for issuance of directions to the official respondent Nos.2 to 4 for protection of their life and liberty from their estranged family members, who are opposing their live-in-relationship.

The facts, in brief, leading to the filing of this petition are that petitioner No.1-Daya Ram born on 18.04.2001 (20 years and 2 months old) and petitioner No.2-Reenu born on 25.10.2006 (14 years and 8 months old), knew each other for the last one year, who with the passage of time fell in love, but the parents of Reenu opposed their relationship. As parents of Reenu were making arrangements to solemnize her marriage with a boy of

their choice and upon learning this, she requested them not to do so, however, the parents remained adament on their decision. The petitioner No.2 left her house on 01.06.2021 and contacted petitioner No.1 and decided to reside together in live-in-relationship till they attain the marriageable age. As per pleadings, it is apprehended that the parents of petitioner No.2 would not spare them as they received continuous threats, whereupon they sent a representation dated 03.06.2021 (Annexure P-3) to the Superintendent of Police, Sirsa by post, and prayed for stern action against the parents of Reenu. Since the representation has failed to evoke any response from the official respondents, as till date no protection has been provided, therefore, the petitioners have approached this court for issuance of necessary directions.

Learned counsel for the petitioners has argued that the petitioners are mature enough to understand good and bad, who are in love with each other and have decided to marry, but their proposal was turned down by the parents and the other relatives of Reenu, so they were left with no other alternative but to live together in live-in-relationship. He submits that till date, there is no physical intimacy between the petitioners as they are waiting to attain the statutory marriageable age, therefore, the private respondents have no right to interfere in their life. In support of his arguments, learned counsel for the petitioners has placed reliance upon the decision of this court rendered in **Preeti and another Versus State of Haryana and others** and **Soniya and another Versus State of Haryana and others** Annexures P-4 and P-5 respectively.

At the time of hearing, learned counsel has also produced the copies of decision dated 03.06.2021 in **Seema Kaur and another Versus**

State of Punjab and others as well as the order dated 04.06.2021 of Hon'ble Supreme Court passed in **Gurwinder Singh and another Versus The State of Punjab and others (Special Leave to Appeal (Crl.) No.4028 of 2021** and contended that in view of the guarantee provided by Article 21 Constitution of India, their right to life cannot be put in danger and prays for issuance of necessary directions to official respondents to provide security to the petitioners.

The above prayer has been vehemently opposed by Mr.Sukhdeep Parmar, learned State counsel, who is assisted by SI Devi Lal, on the ground that the petitioners have approached this court without a valid cause of action and this petition is not maintainable. According to him, petitioner No.2 is a minor, who was removed from the lawful custody of her natural guardians by petitioner No.1 and on the basis of the complaint given by her father (respondent No.5), a case FIR No.200 dated 23.05.2021, under Sections 363, 366-A, 379 and 120-B IPC, already stands registered against Daya Ram and others at Police Station, Nohar, District Hanumangarh (Rajasthan). Learned State counsel has produced the copy of the said FIR to show that Daya Ram along with others is an accused and is wanted by the police, so no indulgence is warranted by this court. He prays that the writ petition be dismissed.

Learned counsel for the parties have been heard and with their assistance perused the case file carefully.

The society, for the last few years, has been experiencing profound changes in social values, especially amongst exuberant youngsters, who seldom in pursuit of absolute freedom, leave the company of their parents etc. to live with the person of their choice, and further in

order to get the seal of the court to their alliance, they file petitions for protection by posing threat to their life and liberty. Such petitions are ordinarily based on the sole ground of apprehension of threat predicted against the disapproving parents or other close relatives of the girl only, as the decision of the couple is rarely opposed by the family members of the boy. Their right to live together is either based on their sudden, secretive and small destination marriage or upon live-in-relationship. Of-course, the aggrieved persons can avail the alternative remedy, but a large number of petitions land in the lap of this court as according to writ petitions, alternative remedy is less felicitous. Majority of such petitions contain formal symbolic averments, grounds with imaginary cause of action, and are rarely founded upon 'actual' or 'real' existence of threat, and these types of cases consume considerable time of this court, that too at the cost of many other cases waiting in line for hearing.

The prayer in all these petitions is based upon fundamental right to life guaranteed under Article 21 Constitution of India. The expression “right to life” as contained in Article 21 is not confined to its literal meaning, but would also include within its sweep the rights of the children and women, as they are more vulnerable to abuse. Further, Article 15(3) also leans in favour of women and children as it empowers the State to make laws favouring them. The adverse effects of child marriage were analysed in depth by Hon'ble Supreme Court in **Independent Thought Versus Union of India and another, (2017) 10 Supreme Court Cases 800**. The relevant observations read as under:-

> *“89. We have adverted to the wealth of documentary material which goes to show that an early marriage and sexual intercourse at an early age could have detrimental effects on*

the girl child not only in terms of her physical and mental health but also in terms of her nutrition, her education, her employability and her general well-being. To make matters worse, the detrimental impact could pass on to the children of the girl child who may be malnourished and may be required to live in an impoverished state due to a variety of factors. An early marriage therefore could have an inter-generational adverse impact. In effect therefore the practice of early marriage or child marriage even if sanctified by tradition and custom may yet be an undesirable practice today with increasing awareness and knowledge of its detrimental effects and the detrimental effects of an early pregnancy. Should this traditional practice still continue? We do not think so and the sooner it is given up, it would be in the best interest of the girl child and for society as a whole.

90. We must not and cannot forget the existence of Article 21 of the Constitution which gives a fundamental right to a girl child to live a life of dignity. The documentary material placed before us clearly suggests that an early marriage takes away the self esteem and confidence of a girl child and subjects her, in a sense, to sexual abuse. Under no circumstances can it be said that such a girl child lives a life of dignity. The right of a girl child to maintain her bodily integrity is effectively destroyed by a traditional practice sanctified by the IPC. Her husband, for the purposes of Section 375 of the IPC, effectively has full control over her body and can subject her to sexual intercourse without her consent or without her willingness since such an activity would not be rape. Anomalously, although her husband can rape her but he cannot molest her for if he does so he could be punished under the provisions of the IPC. This was recognized by the LCI in its 172nd report but was not commented upon. It appears therefore that different and irrational standards have been laid down for the treatment of the girl child by her husband and it is necessary to harmonize the provisions of various statutes and also

harmonize different provisions of the IPC inter-se."

The Apex Court in Independent Thought's case (supra) analyzed various statutes, including Protection of Women from Domestic Violence Act, 2005; Prohibition of Child Marriage Act, 2006; Protection of Children from Sexual Offences Act, 2012; Indian Penal Code, 1860 and other penal provision relating to crime against women and children and noticed the ambiguities by making following observations.

> *"99. However, of much greater importance and significance is Section 42-A of the POCSO Act. This section provides that the provisions of the POCSO Act are in addition to and not in derogation of the provisions of any other law in force which includes the IPC. Moreover, the section provides that in the event of any inconsistency between the provisions of the POCSO Act and any other law, the provisions of the POCSO Act shall have overriding effect. It follows from this that even though the IPC decriminalizes the marital rape of a girl child, the husband of the girl child would nevertheless be liable for punishment under the provisions of the POCSO Act for aggravated penetrative sexual assault.*
>
> *100. Prima facie it might appear that since rape is an offence under the IPC (subject to Exception 2 to Section 375) while penetrative sexual assault or aggravated penetrative sexual assault is an offence under the POCSO Act and both are distinct and separate statutes, therefore there is no inconsistency between the provisions of the IPC and the provisions of the POCSO Act. However the fact is that there is no real distinction between the definition of "rape" under IPC and the definition of "penetrative sexual assault" under the POCSO Act. There is also no real distinction between the rape of a married girl child and aggravated penetrative sexual assault punishable under Section 6 of the POCSO Act. Additionally, the punishment for the respective offences is the same, except that the marital rape of a girl child between 15*

> *and 18 years of age is not rape in view of Exception 2 to Section 375 of the IPC. In sum, marital rape of a girl child is effectively nothing but aggravated penetrative sexual assault and there is no reason why it should not be punishable under the provisions of the IPC. Therefore, it does appear that only a notional or linguistic distinction is sought to be made between rape and penetrative sexual assault and rape of a married girl child and aggravated penetrative sexual assault. There is no rationale for this distinction and it is nothing but a completely arbitrary and discriminatory distinction."*

Finally, the Hon'ble Supreme Court proceeded to conclude as under:-

> *".....Being purposive and harmonious constructionists, we are of opinion that this is the only pragmatic option available. Therefore, we are left with absolutely no other option but to harmonize the system of laws relating to children and require Exception 2 to Section 375 of the IPC to now be meaningfully read as: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape." It is only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus."*

No doubt, the other concept of live-in-relationship between two adults of opposite gender has got recognition in India also, as the legislature has injected some legitimacy in this kind of alliance, while promulgating "Protection of Women from Domestic Violence Act, 2005" and liberally defined "domestic relationship" in Section 2(f). However, despite this elasticity, some sections of the society are reluctant to accept such kinds of relationship. It has to be constantly borne in mind that the length of the relationship coupled with discharge of certain duties and responsibilities

towards each other makes such relationship akin to the marital relations. The Hon'ble Supreme Court in **(2013) 15 Supreme Court Cases 755 (Indra Sarma Versus V.K.V.Sarma),** has already discussed the nature of live-in-relationship and made the following observations:-

> *"56. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.*
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> *56.1 Duration of period of relationship- Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.*
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> *56.2 Shared household- The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.*
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> *56.3 Pooling of Resources and Financial Arrangements- Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.*
>
> *56.4 Domestic Arrangements-Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.*
>
> *56.5 Sexual Relationship- Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give*

emotional support, companionship and also material affection, caring etc.

56.6 Children- Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

56.7 Socialization in Public- Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

56.8 Intention and conduct of the parties- Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship."

A reading of the above clearly indicates that to attach legitimate sanctity to such a relation, certain conditions are required to be fulfilled by such partners. Merely because the two adults are living together for few days, their claim of live-in-relationship based upon bald averment may not be enough to hold that they are truly in live-in-relationship.

Now reverting to the case in hand and upon considering the pleadings and arguments, this court finds that petitioner No.2-Reenu being only 14 years and 8 months old is a minor. Further, a perusal of the memo of parties reflects that petitioner No.1-Daya Ram is representing her, claiming himself to be the next friend of minor. Besides, the writ petition is not signed by any of the petitioners and in support of the pleadings, only the affidavit of petitioner No.1 has been filed. Though, as per averments in the writ petition, entire blame has been put upon the natural guardians of the minor girl to set up compelling circumstances for her to voluntarily leave

the house of parents, in order to join the company of Daya Ram at Sirsa, but there is no pleading by him that his interest is not adverse to the interest of the minor and he is acting for the welfare of the minor girl. The petitioner No.1 is already an accused in case FIR No.200 dated 23.05.2021 and is accused of kidnapping the minor daughter of respondent No.5, therefore, his stand to claim himself as lawful representative of minor girl is not worth acceptance.

Further more, the representation (Annexure P-3) is also vague, which does not contain relevant particulars and material facts about background of their friendship; the date and manner or mode of alleged threat extended to them. Also, there are no details or relations of private respondents mentioned either in the writ petition or in the representation. As per representation, even the parents of Daya Ram had also opposed their live-in-relationship, but they have not been impleaded in the petition. Strangely, petitioner No.1 has not explained as to why the minor girl after leaving the house did not make any complaint either to the police against her parents or contacted any other close relative to resolve her differences with the parents. Thus, it is apparent that the present petition has been filed hastily by petitioner No.1 to put up a defence to the above FIR registered at the instance of respondent No.5.

The judicial pronouncements relied upon by the petitioners are not applicable to the present case as in Preeti's case and Seema's cases, the girl was minor and despite noticing this fact in the judgments, the maintainability of the petitions without proper representation of minor girl was not examined. Similarly, the decision in Soniya's case is also not applicable to the facts and circumstances of this case as in the said case,

both the petitioners, who were in live-in-relationship, were adults and the court, after examining the merits of the said case, directed the Senior Superintendent of Police to look into the representation of the petitioners therein. Likewise, the order dated 04.06.2021 passed by the Apex Court is also not applicable in the present case.

Consequently, this court is not inclined to exercise the extraordinary writ jurisdiction and the writ petition is dismissed.

Further, respondent No.2-Senior Superintendent of Police, Sirsa is directed to depute a responsible police officer to ensure that the custody of the minor girl is restored to her parents after coordinating with the State of Rajasthan police.

Before parting, this court deems it appropriate to observe that despite the penal provisions are in place through the Prohibition of Child Marriage Act, 2006, but child marriages are taking place in violation of the provisions of the said Act. The Hon'ble Supreme Court in **Independent Thought's case,** has already given a suggestion to the Government of India and the State Governments to follow the decision of the State of Karnataka, which had declared child marriage as void ab initio through an amendment dated 20.04.2017. The relevant Paras 154 and 155 of the said judgment are reproduced as under:-

> *"154. After making the aforesaid observations, the Karnataka High Court constituted a four Member committee, headed by Dr. Justice Shivraj V. Patil, former Judge of this Court, to expose the extent of practice of child marriage. The Committee was also requested to suggest ways and means to root out the evil of child marriage from society and to prevent it to the maximum extent possible. The Core Committee submitted its report and made various recommendations. One of its*

recommendations was that marriage of a girl child below the age of 18 years should be declared void ab initio. Pursuant to the report of the Core Committee, in the State of Karnataka an amendment was made in the PCMA and Section 1(A) has been inserted after sub-section 2 Section 3, which reads as under:

> *"(1A) Notwithstanding anything contained in sub-section (1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void ab initio."*

155. Therefore, any marriage of a child, i.e. a female aged below 18 years and a male below 21 years is void ab initio in the State of Karnataka. This is how the law should have been throughout the country. Where the marriage is void, there cannot be a husband or a wife and I have no doubt that protection of Exception 2 to Section 375 IPC cannot be availed of by those persons, who claim to be "husband" of "child brides" pursuant to a marriage which is illegal and void."

This suggestion of the Hon'ble Supreme Court was given in the year 2017, but the same is yet to attract the attention of the States of Punjab, Haryana and Union Territory Administration, Chandigarh, therefore, this court feels it necessary to remind the States to consider this important issue to eradicate menace of child marriage.

Let a copy of the judgment be sent to the Chief Secretaries of the States of Punjab, Haryana and Advisor to U.T.Chandigarh.

June 10, 2021 **(MANOJ BAJAJ)**
ramesh **JUDGE**

Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No