
R.N.R.

Before S.S. Saron, J.

PREETI SHARMA AND ANOTHER,—Petitioners

versus

STATE OF PUNJAB AND OTHERS,—Respondents

Crl. M. No. 27147/M of 2010

8th November, 2010

Code of Criminal Procedure, 1973—S. 482—Prohibition of Child Marriage Act, 2006—Ss. 2, 3 & 12—Hindu Marriage Act, 1955— S.13 (2)(iv)—Solemnization of marriage by petitioners on their own free will—Mother claiming her daughter below 18 years and making allegation of abduction against boy—Dispute regarding date of birth of girl—No enticement by boy—Girl willing to go with

her husband—Whether marriage is void in terms of S.12 of 2006 Act—Jurisdiction of High Court u/s 482 Cr. P.C.—Exercise of — Not to go into validity of marriage—Domain of competent matrimonial Court after following procedure under 2006 Act or 1955 Act—Police directed to provide protection to couple in case they approach them while granting liberty to parties to avail their other remedies in accordance with law.

Held, that the marriage may be voidable at the option of the contracting party who was a 'child' and cannot, in any case, *per se* be said to be void. In fact this Court in exercise of its inherent jurisdiction under Section 482 Cr. P.C. is not to go into the validity or otherwise of the marriage that has been solemnized by the petitioners amongst themselves for that is the domain of the matrimonial Court of competent jurisdiction and that too after following the procedure provided for declaring the marriage to be valid or void. The said procedure cannot be short-circuited or circumvented by ready resort to the provisions of Section 482 Cr. P.C. The settled position is that when a statute makes provisions for exercise of a power, that can be exercised only in the manner provided and all other manner of its exercise are forbidden. Therefore, this Court in exercise of its inherent jurisdiction would not be in a position to go into the validity of the marriage and declare it to be valid, void or voidable. This is the domain of the competent Court after following the procedure under the 2006 Act or 1955 Act as the case may be. The parties would be at liberty to avail their other remedies in accordance with law.

(Para 17)

Ms. Munisha Gandhi, Advocate and Gaurav Goel, Advocate for the petitioners with petitioners namely Preeti Sharma and Shanker in person.

M.C. Berry, Addl. A.G., Punjab.

R.K. Rana, Advocate for respondent No. 4 with Dharamvir (respondent No. 4) and his wife namely Smt. Meena Rani in person.

S.S. SARON, J.

(1) This petition has been filed by the petitioners under Section 482 of the Code Criminal Procedure ("CrPC" for short) for directing respondents No. 2 and 3 to safeguard the life and liberty of the petitioners as they have solemnized their marriage amongst themselves against the wishes of respondent No. 4 who is the father of petitioner No. 1.

(2) According to petitioner No. 1 Preeti Sharma, she is a major aged 19 years. Her date of birth of is 1st May, 1992 as per her matriculation certificate (Annexure P1) issued by the Punjab School Education Board. Shankar (petitioner No. 2) is also a major aged 25 years and his date of birth as per his middle standard examination certificate (Annexure P2) issued by the aforesaid Board is 9th February, 1986. The petitioners had known each other for the last more than one year. Despite the fact that they belong to different castes, they have on their own solemnized their marriage amongst themselves. It is submitted that on 16th July, 2010 both the petitioners left their respective homes and came to Chandigarh and they solemnized their marriage amongst themselves according to Hindu rites and ceremonies. The marriage was solemnized on 6th September, 2010 at Arya Samaj, Sector 22-A, Chandigarh. The marriage certificate (Annexure P3) issued by Arya Samaj Sector 22-A, Chandigarh with respect to their marriage and the photographs (Annexure P4) taken at the time of marriage have been placed on record. After marriage it is alleged that respondent No. 4 who is the father of petitioner No. 1 is continuously threatening the petitioners with dire consequences. The petitioners, it is submitted, are major and therefore, there is no bar to their marriage. The petitioners also submitted an application dated 7th September, 2010 (Annexure P5) to the Senior Superintendent of Police, Fatehgarh Sahib (respondent No. 2) for restraining the father (respondent No. 4) of petitioner No. 1 from troubling or interfering with their matrimonial life. Despite the said application, the threat to them persists. Therefore, they have filed the present petition.

(3) When the petition was taken up for hearing on 15th September, 2010, Smt. Meena Rani who is the mother of petitioner No. 1 appeared and submitted that in fact petitioner No. 1 was a minor and her date of birth is 5th January, 1993. She showed the birth certificate issued by the Haryana Government Health Department under Section 17 of the Births

and Deaths (Registration) Act, 1969. Besides, it was submitted that FIR No. 109, dated 31st August, 2010 has been registered at Police Station Bassi Pathana, District Fatehgarh Sahib against petitioner No. 2 for the commission of offences under Sections 363 and 366-A Indian Penal Code. She took time to engage a counsel. Dharamvir (respondent No. 4 father of petitioner No. 1) was also present in Court on 15th September, 2010. On 23rd September, 2010 reply of respondent No. 4 was filed along with Annexures R4/1 and R4/2. The petitioners have filed their rejoinder to the reply. The Deputy Superintendent of Police Shri Satinderpal Singh, PPS has also filed his reply on behalf of respondents No. 1 to 3.

(4) The dispute between the parties is that Preeti Sharma (petitioner No. 1) is a minor inasmuch as she has not attained the age of 18 years. It is submitted on behalf of respondent No. 4 that as per the birth certificate (Annexure R4/1) of petitioner No. 1, her date of birth is 5th January, 1993 and therefore, she was 17 years 8 months at the time of her marriage on 6th September, 2010. As such, her marriage is void in terms of Section 12 of the Prohibition of Child Marriage Act, 2006 ("2006 Act" for short).

(5) According to the learned counsel for the petitioners, the provisions of Section 12 of the 2006 Act would not apply as it is not a case where petitioner No. 1 has been taken or enticed out of the keeping of the lawful guardian or by force compelled, or by any deceitful means induced to go from any place; or is sold for the purpose of marriage. It is submitted that the marriage is neither void nor voidable under the Hindu Marriage Act, 1955 ("1955 Act" for short) and petitioner No. 1 would only be entitled for divorce in terms of Section 13(2)(iv) of the 1955 Act. Besides, the same is voidable at the option of a contracting party under Section 3 of the 2006 Act.

(6) Learned State counsel has submitted that FIR No. 109, dated 31st August, 2010 stands registered at Police Station Bassi Pathana for the offences under Sections 363 and 366-A of the Indian Penal Code on the statement of Smt. Meena Rani (wife of respondent No. 4 Dharamvir) who is the mother of petitioner No. 1. According to the complainant Smt. Meena Rani, petitioner No. 1 has been abducted and therefore, petitioner No. 1 is not entitled for protection.

(7) It may be noticed that Preeti Sharma (petitioner No. 1) on 13th October, 2010 has appeared and submitted that she did not want to meet her parents. Besides, she wants to live with Shankar (petitioner No. 2) with whom she had married. Today also petitioner No. 1 has appeared and stated that she has solemnized her marriage with Shankar (petitioner No. 2) of her own free will and desire any without and kind of pressure or undue influence. Besides, she is happy with her marriage. She also stated that she does not wish to meet her parents. Petitioner No. 1 Preeti Sharma has been identified by the learned counsel for the petitioners.

(8) After giving my thoughtful consideration to the matter, it may be noticed that the question of the validity of the marriage is not to be gone into the present proceedings under Section 482 Cr. P.C. This is the domain of the competent matrimonial Court. The limited relief asked for by the petitioners in this case is for protection so that parents of petitioner No. 1 do not harass the petitioners. The provisions of the 2006 Act or that of the 1955 Act do not per se make a marriage void in case one of the spouse is less than the requisite age. In terms of Section 2(a) and 2(b) of the 2006 Act, child and child marriage have been defined as follows :—

- (a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age :
- (b) “child marriage” means a marriage to which either of the contracting parties is a child.

(9) In terms of Section 2(f) of the 2006 Act, minor has been defined as follows :—

- (f) “minor” means a person who, under the provisions of the Majority Act, 1875 (9 of 1875) is to be deemed not to have attained his majority.

(10) In terms of the Majority Act, 1875 a person is deemed to have attained the age of majority when he has completed his age of 18 years and not before.

Section 3 of the 2006 Act reads as under :—

“3. Child marriages to be voidable at the option of contracting party being a child.—

- (1) Every child marriage, whether solemnized before or after the commencement of this Act, shall be

voidable at the option of the contracting party who was a child at the time of the marriage.

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district Court only by a contracting party to the marriage who was a child at the time of marriage :

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(11) Section 12 of the 2006 Act provides for marriage to be void in certain circumstances. The same reads as under :—

12. Marriage of a minor child to be void in certain circumstances.—
Where a child, being a minor—

- (a) is taken or enticed out of the keeping of the lawful guardian; or
- (b) by force compelled, or by any deceitful means induced to go from any place; or
- (c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes such marriages shall be null and void.

(12) Section 13 of the 1955 Act provides for divorce and Section 13(2)(iv) of the 1955 Act reads as under :—

13(2)(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.

(13) A perusal of the above provisions show that a marriage may be void if the conditions enumerated in clauses (a), (b) and (c) of Section 12 of the 2006 Act are met. However, it would be voidable under Section 3 of the 2006 Act at the option of the contracting party who was

a child at the time of the marriage. Besides, in the case of a minor a divorce can be obtained by the wife only by a petition for the dissolution of a marriage by a decree of divorce. In the circumstances, it may be noticed that the provisions of the 1955 Act and the 2006 Act though restrain solemnization of child marriages yet it does not declare them void or invalid although it may be punishable under the law. The marriage at the most may be voidable one which can be got declared as such on a petition filed either under Section 3 of the 2006 Act or by a petition for divorce under Section 13(2)(iv) of the 1955 Act.

(14) In the present case, petitioner No. 1 Preeti Sharma has of her own free will married petitioner No. 2 Shankar and even today in Court she has stated that she wants to live with him. She has reached the age of discretion.

(15) In **S. Varadarajan versus State of Madras (1)**, it was held by the Supreme Court that taking or enticing a minor out of the keeping of a lawful guardian is an essential ingredient of the offence of kidnapping. However, when the girl (who though a minor had attained the age of discretion and is on the verge of attaining majority and is a senior college student) from the house of the relative of the father where she is kept, herself telephones the accused to meet her at a certain place, and goes there to meet him and finding him waiting with his car gets into that car of her own accord, and the accused takes her to various places and ultimately to the Sub-Registrar's Office where they get an agreement to marry registered, and there is no suggestion that this was done by force or blandishment or anything like that on the part of the accused but it is clear from the evidence that the insistence of marriage came from her side, the accused by complying with her wishes can by no stretch of imagination be said to have "taken" her out of the keeping of her lawful guardianship, that is the father in the said case. The Himachal Pradesh High Court in **Kamal Singh versus The State of H.P., (2)** considered the case where there was some intimacy between prosecutrix and the appellant in the said case and the prosecutrix was willing and active agent in her enticement and she accompanied the accused of her own accord while her parents were asleep, it was held that even though the prosecutrix was below 18 years would not be material.

(1) AIR 1965 S.C. 942

(2) 1985 (1) Crimes 151

The accused therein was acquitted. The Delhi High Court in **Bhagwan Singh and others versus State and another (3)** considered a case where a Muslim girl aged 17 years 3 months converted to Hinduism and married the accused. The FIR under Sections 363 and 366 IPC was registered by the father of the girl. It was observed that marriage of such a spouse is neither void nor illegal on account of his or her being less than 18 years but over 15 years of age. In **Rukshana and another versus Government of NCT of Delhi and Others, (4)** a minor girl aged 16 years 6 months had a liking for the accused. Both ran away and got married. They had a son out of the marriage. The FIR for the offences under Sections 363, 364-A and 365 IPC was quashed in the interest of accused, prosecutrix and the child. In **Shri Jitender Kumar Sharma versus State and another, (5)** in a case where a boy aged 18 years and a girl aged 16 years who had a liking for each other fled away from their home and married according to Hindu rites, held that the marriage was not void though it was in contravention of Section 5(iii) of the 1955 Act. 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 the guardian of his minor wife. A minor, it was held, is competent to act as 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.

(16) Learned counsel appearing for respondent No. 4 has placed strong reliance on **Amninder Kaur and another versus State of Punjab and others, (6)**. The said case related to a run away marriage where a minor girl aged 16 years and 2 months had run away and got married. It was held that the marriage is void and the couple was not entitled to the protection of police. In the said case it was held that in view of the provisions of the 2006 Act marriage was void because petitioner No. 2 in the said case had enticed petitioner No. 1 therein from the lawful keeping of respondent No. 4 and the Court in the garb of providing police protection cannot declare the void marriage as valid. Therefore, the said case was one where the minor had been enticed away and kept away from the lawful

(3) 2007 (1) R.C.R. (Criminal) 347

(4) 2007 (3) R.C.R. (Crl.) 542 (Delhi)

(5) 2010 (4) R.C.R. (Crl.) 20 (Delhi) (D.B.)

(6) 2010 (1) R.C.R. (Crl.) 261 (P&H)

guardianship. In the facts and circumstances, it was held that the marriage would be void. However, as has already been noticed in the present case, it is not shown that petitioner No. 1 has been enticed by petitioner No. 2 inasmuch as both the petitioners are present in Court and petitioner No. 1 has stated that she has gone of her own free will. Learned counsel appearing for respondent No. 4 has also submitted that the parents of petitioner No. 1 have with a heavy heart reconciled to the fact that petitioner No. 1 has left her parental home. It is submitted that her marriage was fixed with a suitable boy and an engagement ceremony was also performed. In the engagement ceremony, petitioner No. 1 was given one ring by her fiance and pair of ear rings by the parents of the girl. Petitioner No. 1 who is present in Court stated that she has brought the ring and the pair of ear rings and she has handed them over to counsel for respondent No. 4 who in turn has given them to Smt. Meena Rani, mother of petitioner No. 1 which have been accepted by her.

(17) Therefore, as has already been noticed the marriage may be voidable at the option of the contracting party who was a 'child' and cannot in the present proceedings, in any case, per se be said to be void. In fact this Court in exercise of its inherent jurisdiction under Section 482 CrPC is not to go into the validity or otherwise of the marriage that has been solemnized by the petitioners amongst themselves for that is the domain of the matrimonial Court of competent jurisdiction and that to after following the procedure provided for declaring the marriage to be valid or void. The said procedure cannot be short-circuited or circumvented by ready resort to the provisions of Section 482 Cr. P.C. The settled position is that when a statute makes provision for exercise of a power, that can be exercised only in the manner provided and all other manner of its exercise are forbidden. Therefore, this Court in exercise of its inherent jurisdiction would not be in a position to go into the validity of the marriage and declare it to be valid, void or voidable. This is the domain of the competent Court after following the procedure under the 2006 Act or 1955 Act as the case may be. The parties would be at liberty to avail their after remedies in accordance with law. However, insofar as the present case is concerned, the same is for providing protection and is disposed of with a direction that in case the petitioners approach respondents No. 2 and 3 setting out their grievances as mentioned herein, the same shall be duly considered by any of them in accordance with law.

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The petitioner submitted his resignation for second time with effect from 1st March, 1980 by giving one month's notice on 1st February, 1980 and again he requested for withdrawal of said resignation on 25th February, 1980. He was allowed withdrawal of his resignation vide office letter No. 229/ENG-317, dated 5th March, 1980. The copies of the above said letters are also attached herewith as Annexure R-6 to Annexure R-8 respectively for ready reference.

Thereafter the petitioner submitted his resignation from the service of the Board by giving one month's notice vide his letter dated 3rd May, 1980 and not on 2nd May, 1980 as alleged by the petitioner. The true translated copy of the said letter dated 3rd June, 1980 is attached herewith as Annexure R-9. It is further made clear that there is no such letter dated 2nd May, 1980 in the record of the answering respondent and further, it is also totally wrong that the petitioner was relieved on 2nd May, 1980. The resignation of the petitioner was accepted with effect from 2nd July, 1980 A.N. vide office order No. 18/ENG-317, dated 5th January, 1981 and the petitioner was relieved on 2nd July, 1980 A.N. on which date the petitioner has submitted his departure report. The copies of the said departure report and office order are attached herewith as Annexure R-10 and Annexure R-11 respectively. In these circumstances, it is clear that the petitioner has suppressed the material facts and tried to mislead this Hon'ble Court. It is well settled law that a litigant, who withholds vital information from the Court, is not entitled to the relief and the case deserves dismissal at the very outset.

4. *That the contents of para 4 are admitted to the extent that the petitioner had submitted the representation Annexure P-5 and subsequently on 8th October, 1996 with the answering respondent and the same was rejected vide order dated 23rd December, 1996 Annexure P-6. Rest of the para*

is wrong and denied. It is made clear that since the case of the petitioner was not covered under rule 4.19(b) of the Civil Services Rules, Volume-II and on the other hand, the same was covered under Rule 4.19(a) of the C.S.R. Vol. II, therefore, the case of the petitioner was rightly rejected by the answering respondent. The said Rules 4.19(a) and 4.19(b) of the C.S.R., Vol. II are reproduced hereunder for ready reference of this Hon'ble Court :—

'4.19(a) Resignation from public service, dismissal or removal from it, either under proviso (c) to Article 311(2) of the Constitution for over anti-national activities such as sabotage, espionage etc. or for misconduct, insolvency, in-efficiency not due to age or failure to pass a prescribed examination entails forfeiture of past service and no pension shall be granted in the aforementioned circumstances.

4.19(b) Resignation of an appointment to take up, with proper permission, another appointment, whether permanent or temporary, service in which counts in full or in part, is not a resignation of public Service.'

(5) From the contentions raised in paragraph No. 3 and 4 of the written reply, now the sole question which requires consideration by this Court is, as to whether tendering a resignation and withdrawal thereof before its acceptance would amount to misconduct depriving the petitioner from the pensionary benefits ?

(6) In the opinion of this Court, if an employee tenders his resignation and before its acceptance resignation is withdrawn with the consent of the department and employee thereafter was allowed to work, it will not amount to any misconduct. Moreover, in the present case, neither any show cause notice is issued nor any disciplinary action is taken and all of sudden, after acceptance of his resignation and relieving him, department has stopped the pension saying earlier resignations and their withdrawal would amount to misconduct which cannot be sustained in the eyes of law. Petitioner had expired pending present petition how his family would have survived without any income and pension, is one of the factor compelling this Court to allow this petition with heavy exemplary costs.

(7) Present petition stands allowed. Impugned order is quashed. Respondent is directed to release the entire pensionary benefits to the LRs of the petitioner and to grant the family pension if permissible under the law after the death of the petitioner within 30 days from today along with interest thereon at the rate of 12% per annum. Exemplary costs of Rs. One lac is imposed on the respondent. It is directed that half of the cost shall be payable to the petitioner and half of the cost shall be deposited with High Court Free Legal Aid Committee within 30 days from today.
