

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP No.733 of 2021 (O&M)
DATE OF DECISION: 25.01.2021

Shoukat Hussian and another

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Ms. Jyotika Panesar, Advocate for
Mr. Karan Singh Rana, Advocate for the petitioners

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ALKA SARIN, J. (Oral):

Heard through video conferencing.

This is a Criminal Writ Petition under Article 226/227 of the Constitution of India for issuing a writ in the nature of mandamus directing respondent Nos.2 and 3 to protect the life and liberty of the petitioners at the hands of private respondent Nos.4 to 14.

In the present case, both the petitioners are Muslims. They fell in love about 2 years ago and decided to perform marriage. The date of birth of petitioner No.1 is 01.04.1984 and that of petitioner No.2 is 10.01.2004 as per their Aadhar Cards, which have been annexed with the petition as Annexures P-1 and P-2, respectively. Both the petitioners have solemnized their marriage on 21.01.2021 as per Muslim rites and ceremonies.

Learned counsel for the petitioners would contend that this is the first marriage of both the petitioners. He has relied upon the decisions by this Court in '*Kammu vs. State of Haryana & Ors.*' [2010(4) RCR (Civil) 716]; '*Yunus Khan vs. State of Haryana & Ors.*' [2014(3) RCR (Criminal) 518] and '*Mohd. Samim vs. State of Haryana & Ors.*' [2019(1) RCR (Criminal) 685] to contend that in Muslim law puberty and majority are one and the same and that there is a presumption that a person attains majority at the age of 15 years. It is further contended that a Muslim boy or Muslim girl who has attained puberty is at liberty to marry any one he or she likes and the guardian has no right to interfere.

Learned counsel for the petitioners would further contend that the life and liberty of the petitioners is in grave danger at the hands of respondent Nos.4 to 14. It is further contended that the petitioners have also moved a representation dated 21.01.2021 (Annexure P-4) to the Senior Superintendent of Police, S.A.S. Nagar, Mohali (respondent No.2). However, no action has been taken thereon. Learned counsel for the petitioners submits 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 (Annexure P-4) in a time-bound manner in accordance with law.

Notice of motion.

On the asking of the Court, Mr. V.G. Jauhar, Senior DAG, Punjab has joined the session through video conferencing and accepts notice on behalf of respondent Nos.1 to 3.

Heard learned counsel for the parties.

This Court has taken note of the judgements cited on behalf of the petitioners and also the fact that the girl in the instant case i.e. petitioner No.2 is aged more than 17 years. In the case of **Yunus Khan**(*supra*) it has been noted that the marriage of a Muslim girl is governed by the personal law of the Muslims. Article 195 from the book 'Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla' has also been reproduced in the said decision which Article reads as under :

"195. Capacity for marriage - (1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage.

(2) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians.

(3) A marriage of a Mahomedan who is sound mind and has attained puberty, is void, if it is brought about without his consent.

Explanation - Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years."

The law, as laid down in various judgments cited above, is clear that the marriage of a Muslim girl is governed by the Muslim Personal Law. As per Article 195 from the book 'Principles of Mohammedan Law by Sir Dinshah Fardunji Mulla', the petitioner No.2 being over 17 years of age was competent to enter into a contract of marriage with a person of her choice. Petitioner No.1 is stated to be more than 36 years of age. Thus, both the petitioners are of marriageable age as envisaged by Muslim Personal Law. In any event, the issue in hand is not

with regard to the validity of the marriage but to address the apprehension raised by the petitioners of danger to their life and liberty at the hands of the private respondents and to provide them protection 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 his or her life and personal liberty except as per the procedure established by law. The Court cannot shut its eyes to the fact that the apprehension of the petitioners needs to be addressed. Merely because the petitioners have got married against the wishes of their family members, they cannot possibly be deprived of the fundamental rights as envisaged in the Constitution of India.

In view of the above discussion 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 present petition is disposed off with a direction to the Senior Superintendent of Police, S.A.S. Nagar, Mohali (respondent No.2) to decide the representation of the petitioners dated 21.01.2021 (Annexure P-4) and take necessary action as per law.

It is, however, made clear that this order shall have no effect on any other civil or criminal proceedings, if any, instituted/pending against either of the parties.

(ALKA SARIN)
JUDGE

25.01.2021
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<p>NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO</p>
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