

Court No. - 44

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Case :- CRIMINAL MISC. WRIT PETITION No. - 11007 of 2020

Petitioner :- Pratiksha Singh And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Kamlesh Kumar Singh

Counsel for Respondent :- G.A., Shashi Kant Mishra

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Shamim Ahmed, J.

1. This petition has been filed with a prayer to quash the First Information Report in Case Crime No. 87 of 2020, under Section 363 and 366 I.P.C., Police Station Kandwa, District Chandauli, as per which the daughter of the informant has been enticed away by the accused person and he apprehends that either she has been sold or she has been killed. Prayer therefore, is made to lodge an F.I.R. and to proceed with investigation in accordance with law.

2. This F.I.R. is challenged on the ground that the victim and the second petitioner have fallen in love and have solemnized their marriage and are, therefore, living together. Specific assertion has been made in that regard in the writ petition and a marriage agreement has also been placed before this Court.

3. Taking note of such contention, this Court entertained the present petition and passed following order on 15.10.2020, which reads as under:

“Heard Sri K.K. Singh, learned counsel for the petitioners, Km. Meena, learned AGA for the State and perused the impugned F.I.R. as well as material brought on record.

Learned A.G.A. has accepted notice on behalf of the opposite party nos. 1 to 3.

Issue notice to the opposite party no. 4. Each of the respondent is granted four weeks time to file counter affidavit.

Rejoinder affidavit, if any, may also be filed within two weeks thereafter.

List after six weeks.

Learned counsel for the petitioners submits that the victim-

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petitioner no. 1 is admittedly as per the F.I.R. as well as high school marks sheet is a major girl aged about 18 years as in the high school certificate her date of birth has been mentioned as 10.7.2002. He further contended that once they are major and they have voluntarily married, then to conceive in view of the judgment of Apex Court rendered in Criminal Appeal No. 1142 of 2013 - Sachin Pawar Vs. State of U.P., decided on 02.08.2013, that, offence has been committed under Sections 363, 366 I.P.C., cannot be approved of.

Prima facie arguments advanced appear to have some substance and require consideration by this court as such pursuant to impugned F.I.R. dated 8.9.2020, registered as Case Crime No 87 of 2020, u/s 363, 366 IPC, police station Kandva, District Chandauli further orders, no coercive action be taken against the petitioners, namely, Pratisksha Singh and Karan Maurya @ Karan Singh.

It is made clear that if the petitioners do not take steps to serve notice to respondent no. 4 within two weeks' from today, the interim protection granted above shall automatically vacated and this petition shall stand dismissed without further reference to any other Bench of this Court.

The party shall file computer generated copy of order downloaded from the official website of High Court Allahabad, self attested by it alongwith a self attested identity proof of the said person(s) (preferably Aadhar Card) mentioning the mobile number(s) to which the said Aadhar Card is linked, before the concerned Court/Authority/Official.

The concerned Court/Authority/Official shall verify the authenticity of the computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.”

4. A counter affidavit has been filed by the informant in which the only ground urged to oppose the prayer is that the marriage itself is not legal, since the bridegroom has not completed the age of 21 years at the time of marriage. It is stated since marriage itself is illegal, therefore marriage claimed by the petitioner's is contrary to law and the F.I.R. ought not be quashed.

5. Section 5 (iii) of the Hindu Marriage Act, 1955 (herein after referred to as “Act”) provides for the minimum age of bride and bridegroom as 18 years and 21 years, respectively. In the facts of the

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present case on the date of alleged marriage, the victim is shown to be above 18 years and the only ground is that the bridegroom is below 21 years.

6. In the facts of the present case both the petitioners are shown to have married each other out of their own volition and are living together for the last more than two years since their marriage.

7. The legality of the marriage is not under challenge before us. Even otherwise any violation of Section 5 (iii) of the Act would not render the marriage void. Section 11 of the Act provides for void marriages while Section 12 of the Act provides for voidable marriages. Section 11 and 12 of the Hindu Marriage Act are reproduced herein below:

“Void marriages- Any marriage solemnised 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.

Voidable marriages . (1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:

(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force [or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage

(a) on the ground specified in clause (c) of sub-section

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 (1) shall be entertained if

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied-

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [the said ground]”

8. While defining void marriages, the legislature has specifically omitted to mention Clause (iii) of Section 5 as one of the grounds for violation of which the marriage itself is rendered void. Similarly, Section 12 also does not specify that any violation of Clause 5 (iii) would render the marriage voidable.

9. In such circumstances, mere fact that the second petitioner was not above 21 years would not render the marriage void. At best any violation of Section 5 (iii) would render the person responsible liable for punishment in terms of Section 18 of the Act. However, the marriage itself would not be questionable on such ground.

10. On the date when the matter is being heard the second petitioner otherwise is above 21 years of age.

11. Necessary ingredients to attract an offence under Section 363 and 366 would then not be made out, once it is shown that the victim has joined the company of the accused out of her own free will and she has neither been kidnapped nor abducted or enticed to compel into

the marriage.

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12. Section 363 also would not be attracted inasmuch as, it merely provides for punishment for kidnapping from lawful guardianship. Kidnapping from lawful guardianship is defined in Section 361 I.P.C., as per which any person who takes or entices any minor under 16 years of age if a male, or under 18 years of age if a female, only then an offence can be said to have been committed. Here the alleged victim is above 18 years of age, as per her High School Certificate and she has clearly stated in the writ petition that she has gone with the second petitioner out of her own will and has also married the second petitioner. The assertion made in that regard in para 16 has not been denied in para 13 of the counter affidavit, once that be so, we find that necessary ingredients to invoke the provisions of Section 363 and 366 I.P.C. are clearly found lacking in the facts of the case and the offence, as alleged, is not shown to have been committed. It is otherwise well settled that it is the right of a major to live with any one out of his/her own will.

13. In the facts of the case, the victim admittedly is above 18 years of age and once she had joined the company of second petitioner, voluntarily, the offences disclosed in the First Information Report are clearly not shown to have been made out.

14. Accordingly, the writ petition succeeds and is **allowed**.

15. The impugned First Information Report bearing Case Crime No. 87 of 2020, under Section 363 and 366 I.P.C., Police Station Kandwa, District Chandauli, a copy of which is contained in Annexure-1 to the petition, is hereby quashed.

Order Date :- 23.02.2022

Arvind