IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

L.P.A. No.385 of 2016 (O&M)
DATE OF DECISION : 16.5.2016

Elaichi and another APPELLANTS

VERSUS

State of Punjab and others RESPONDENTS

CORAM : HON'BLE Mr.JUSTICE MAHESH GROVER
HON'BLE JUSTICE Mrs.LISA GILL

1. Whether reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present:- Shri Damanjeet Bhoriwal, Advocate for the appellants.

Shri Manoj Bajaj, Additional A.G. Punjab.

MAHESH GROVER, J.

This appeal has been preferred against the order dated 5.2.2016 passed by the learned Single Judge the offending portion of which is extracted here below :-

> "While parting with this order, this Court cannot lost sight of the fact that petitioner No.2 is less than 21 years and he has solemnized marriage with petitioner No.1 which is in violation of the provisions of Prohibition of Child Marriage Act, 2006.

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> **Respondent No.2 – Senior Superintendent of Police, Bhatinda, Punjab is directed to register a case and to investigate the same, and if a case is made out, to proceed with the same in accordance with law. However, it is made clear that parents of petitioners are not a party to the marriage, rather marriage is against their wish and consent. So, they shall not be involved in this case in any manner."**

The appellants had approached this Court with an apprehension of threat to their life and liberty on account of marriage without parental consent.

Such an apprehension based on threat to life and liberty ought to have been addressed by an order adequately equipped to allay such apprehensions and grant protection in Constitutional scheme of things. We are conscious of the issue of maintainability of an L.P.A. against an order passed by a Court in exercise of its jurisdiction under Section 482 Cr.P.C., but noticing threat to life and liberty and the detriment to the cause espoused in the petition by the observations made by the learned Single Judge, we would deem it appropriate to exercise our jurisdiction under Article 226 of the Constitution of India to set aside the afore-extracted observations. The parties to the marriage even if minor, would still have a right to accompany a person of their choice.

The Hon'ble Supreme Court in **Fiaz Ahmed Ahanger and others v. State of J&K** 2009(3) R.A.J. 692, observed as under :-

> "In such case of intercaste or inter-religion marriage the Court has only to be satisfied about two things :
>
> (1) that the girl is above 18 years of age, in which case, the law regards as a major vide Section 3 of the Indian

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Majority Act, 1875. A major is deemed by the law to know what is in his or her welfare.

(2) The wish of the girl.

In the circumstances, we direct that nobody will harass, threaten or commit any acts of violence or other unlawful act on the petitioner, Chanchali Devi/Mehvesh Anjum and the petitioner's family members and they shall not be arrested till further orders in connection with the case in question. If they feel insecure, they can apply to the police and, in such event, the police shall grant protection to them."

Further, the Delhi High Court in **Vivek Kumar alias Sanju and another v. The State and another** Crl.M.C.No.3073-74 of 2006 decided on 23.2.2007 observed as under :-

"There is no law which prohibits a girl under 18 years from falling in love with someone else. Neither falling in love with somebody is an offence under I.P.C. or any other penal law. Desiring to marry her love is also not an offence. A young girl, who is in love has two courses available to her – one is that she should marry with the consent of her parents after obtaining the consent of her parents. If her parents do not agree to persuade them or to wait for attaining the age of majority and then exercise her right as a major to marry the person of her own choice. However, this is possible only when the house of her parents where she is living has congenial atmosphere and she is allowed to live in peace in that house and wait for attaining age of majority. This might

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> have been the reason in the mind of petitioner No.2 when she told her father that she was in love and wanted to marry Sanju, but the response of father when daughter confided in him, created the fear in the mind of petitioner No.2. Her father slapped her and told that her action would malign the religion and bring danger to the religion. He even threatened to kill her and marry her off to some rich person. When once such a threat is given to a girl around 17 years of age, who is in love, under such circumstances she has a right to protect her person and feelings against such onslaught of her relatives even if the onslaught is from her own parents. Right to life and liberty as guaranteed by the Constitution is equally available to minors. A father has no right to forcibly marry off his daughter, who is below 18 years against her wishes. Neither he has right to kill her, because she intends marry out of her religion. If a girl around 17 years of age runs away from her parents house to save herself from the onslaught of her father or relatives and joins her lover or runs away with him, it is no offence either on the part of the girl or on the part of boy with whom she ran away and married."

Besides, the validity of the marriage may be an issue to be gone into by the competent authority when an issue of such validation is raised, but to force the young people to undergo the rigors of registration of a case of police investigation, may come directly in conflict with the sacrosanct fundamental right to life and liberty guaranteed to each citizen.

We, therefore, direct that the afore-extracted observations be set

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aside. This, however, should not be construed to be a binding precedent to encourage filing of LPAs against decisions rendered under Section 482 Cr.P.C.

Appeal stands disposed of.

(MAHESH GROVER)
JUDGE

(LISA GILL)
JUDGE

May 16, 2016
GD

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