IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRWP-4181-2020 (O&M)

Date of Decision : October 16th, 2020

Preeti and another **..... PETITIONERS**

VERSUS

State of Haryana and others **.... RESPONDENTS**

CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Gautam Diwan, Advocate, for the petitioners.
Ms. Mahima Yashpal, Deputy Advocate General, Haryana.
Mr. Ravi Malik, Advocate, for respondents No.4 & 5.

...

Sanjay Kumar, J.

A rather disturbing phenomenon that has gained alarming momentum over the years is that of runaway couples – young persons who profess to love each other much to the dislike of one or both of their families and choose to defy them by running away from home. The concomitant fall-out of such acts on their part is the possible threat of physical harm or worse, sometimes on the basis of caste considerations, with the tacit or vocal approval of Khap Panchayats or community elders. These circumstances drive such couples to approach this Court for protection of their lives and liberty from their estranged family members.

The case on hand is one such. Preeti and Sahil, the petitioners herein, claim to have known each other for the last two years. They state that they fell in love but Preeti's parents, respondents No.4 and 5 herein, were opposed to their relationship. According to the petition averments,

Preeti's parents started making arrangements to solemnize her marriage with a boy of their choice. Preeti is stated to have overheard her parents while they were talking about sending her with family members to perform Chunni ceremony in the last week of June, 2020. Preeti claimed that she opposed the decision of her parents and requested her mother, with folded hands, not to spoil her life as she had already chosen her life partner, the 2nd petitioner. However, her parents did not accede to her request and her father directed her mother to be vigilant about Preeti's movements and restrictions were imposed upon her.

Preeti further claimed that when she got an opportunity to run away from her home on 18.06.2020, she immediately contacted Sahil and told him about her parents' decision to solemnize her marriage with a boy of their choice. The petitioners stated that they ran away together from their homes on 18.06.2020 and got married on 23.06.2020 at a temple in Panchkula. Photographs were filed in proof of this marriage. According to the petitioners, Preeti's father proclaimed that he would not spare them and would kill both of them. Claiming to have received continuous threats of this nature, Preeti and Sahil addressed representation dated 23.06.2020 to the Superintendent of Police, District Sonipat, the 2nd respondent herein. Therein, they stated that Preeti had run away from her home on 18.06.2020 and contacted Sahil and that they thereafter solemnized their marriage on 23.06.2020. They further stated that they were receiving severe threats from Preeti's parents, who were hell bent upon killing them, and prayed for stern legal action to be taken. Thereafter, complaining of inaction on the part of the 2nd respondent upon the aforestated

representation, they filed the present writ petition seeking a direction to the police authorities to provide them protection from the 4th and 5th respondents and their relatives.

The petition averments disclosed that Preeti's date of birth is 01.08.2003. She was, therefore, a minor as on the date she left her parental home. In matters of this nature, where the girl who ran away from home is a minor, this Court tries to protect her interest either by entrusting her custody to her parents or by sending her to a Nari Niketan/Women's Home. Most times, this course of action is not to the liking of the girl who would have approached this Court along with her paramour seeking protection, but such orders are usually passed by this Court in exercise of its *parens patriae* jurisdiction under Clause 12 of the Letters Patent dated 21st March, 1919.

In keeping with this practice, this Court passed an order on 26.06.2020, noting that Preeti was not even 17 years of age and that there was no proof of a valid and lawful marriage having taken place between her and Sahil, who was himself just 18 years of age. Notice was accordingly directed to be served upon Preeti's parents, respondents No.4 and 5 and, in the meanwhile, the police authorities were directed to ensure that no harm was caused to Preeti and Sahil. This Court further directed that in event the police authorities apprehended Preeti, she should be placed in the custody of the Nari Niketan/Protection Home at Sonipat.

Notice having been served, Mr. Ravi Malik, learned counsel, presently appears for Preeti's parents, respondents No.4 and 5. He filed his reply raising various grounds to disallow the prayer of the petitioners.

While so, Mr. Gautam Diwan, learned counsel for the petitioners, filed an application to recall the order dated 26.06.2020, insofar as it pertained to placing Preeti in the Nari Niketan/Protection Home at Sonipat. On 09.09.2020, this Court noted that Preeti and Sahil claimed that they had gotten married and opined that if the marriage was accepted, Sahil would be Preeti's legal guardian. As this aspect required further examination and as Mr. Gautam Diwan, learned counsel, stated that Sahil's mother was ready to accept Preeti as her daughter-in-law and look after her, this Court adjourned the matter to enable Sahil's mother to file an affidavit to that effect. In the meanwhile, the order dated 26.06.2020, to the extent it required the police authorities to place Preeti in the Nari Niketan/Protection Home at Sonipat, was stayed.

The Deputy Superintendent of Police, Headquarters, Sonipat, filed a status report. Therein, he stated that adequate protection would be given to the petitioners if they approached the police. According to him, the petitioners had never done so. He further stated that on the complaint made by the 4th respondent, FIR No.162 dated 19.06.2020 had been registered under Sections 365, 379, 506 and 34 IPC on the file of Police Station Sector 13/17, Panipat. Sahil is shown as the accused therein along with others. According to the complaint, Preeti had left home after committing theft of Rs.50,000/- in cash and ornaments of the value of Rs.2,50,000/-. The family members of Preeti are stated to have assured the police that there was no danger to her from them and that they wanted her to be with them, as she had not attained marriageable age. The whereabouts of the petitioners were stated to be unknown.

In their reply, Preeti's parents, respondents No.4 and 5, stated that Preeti was just 16 years and 10 months at the time of her marriage. They claimed that Sahil, who was 18 years and 6 months of age, had lured Preeti from their custody on the pretext of marriage, though neither of them was of marriageable age. According to them, the marriage was void under the Prohibition of Child Marriage Act, 2006 (for short, 'the Act of 2006') and in any event, except for some photographs there was no evidence of an actual marriage ceremony. They asserted their right to have the custody of their minor daughter. They pointed out that they had taken recourse to legal remedies by lodging a criminal complaint against Sahil for kidnapping their daughter and denied that there was any threat to the life and liberty of the petitioners from them.

Certain developments that took place during the pendency of this case also need to be taken note of. Preeti was apprehended by the police and produced before the learned Duty Magistrate at Panipat. She got recorded her statement under Section 164 Cr.P.C. in favour of Sahil and expressed her wish to join him. She categorically refused to go back to her parents. However, the Magistrate directed that Preeti should be produced before the Child Welfare Committee at Panipat. On 21.09.2020, she was produced before the said Committee.

Mr. Gautam Diwan, learned counsel, brought it to the notice of the Chairperson of the Committee that this writ petition was pending and apprised the Chairperson of the orders passed by this Court, both in this writ petition as well as in LPA-2146-2016, titled **Bhim Sain vs. State of Punjab and others**, decided on 27.10.2016. The Chairperson

adjourned the matter to 22.09.2020 and directed that Preeti should be sent to the Protection Home at Panipat in the meanwhile. On 22.09.2020, an application was moved before the Child Welfare Committee, Panipat, by Neelam, Sahil's mother, seeking Preeti's custody. On that day, Preeti was again produced before the Committee and expressed her desire to either go with her husband or with Neelam, her mother-in-law. Preeti's parents, along with Mr. Ravi Malik, their counsel, were also present and counseling was conducted, but despite the same, Preeti refused to go back to her parents. She affirmed her wish to go with Neelam. The Committee sent Preeti back to the Protection Home and adjourned the matter to 24.09.2020. On 24.09.2020, Preeti was produced before the Committee and she complained that some men had entered the Protection Home during the night hours and had misbehaved with her. However, the Chairperson of the Committee did not pay heed to this statement, as per the claim made by Preeti and her learned counsel. In any event, Preeti escaped from the office of the Committee and contacted her counsel. Thereafter, during the course of the VC hearing of this case, Preeti, who was present in the office of Mr. Gautam Diwan, learned counsel, addressed this Court personally and reiterated her wish to either stay with her husband or go with his mother, Neelam. She categorically stated that she did not wish to return to her parents.

Affidavit dated 14.09.2020 was filed by Neelam, Sahil's mother. Therein, she stated that she was ready and willing to accept Preeti as her daughter-in-law and undertook to provide her care and shelter. She further stated that, in the event her son, Sahil, was

apprehended by the police on the basis of the FIR lodged by Preeti's parents, she would still take care of and look after Preeti.

This Court is also informed that Preeti submitted a complaint to the Superintendent of Police, Panipat, against her parents. Therein, she affirmed that she had left her parents' home out of her own free will and had married Sahil. She further stated that she herself ran away from the office of the Child Welfare Committee, Panipat, of her own accord without any pressure or enticement from any quarter.

Arguments having been advanced on behalf of all the parties, the matter is now amenable to final disposal.

At the outset, it may be noted that the statutory scheme on the subject of child marriages lacks clarity. Various laws deal with or touch upon aspects pertinent to child marriages but there is no consistency as to the consequences that flow therefrom. Being Hindus, Preeti and Sahil are governed by the Hindu Marriage Act, 1955 (for short, 'the Act of 1955'). Section 5 thereof prescribes the conditions of a Hindu marriage and Section 5 (iii) requires that a bridegroom should complete the age of 21 years while a bride should complete the age of 18 years at the time of marriage. Preeti and Sahil do not satisfy this requirement. However, Section 11 of the Act of 1955 makes it clear that violation of Section 5 (iii) would not render the marriage void, as only the conditions prescribed in Section 5 (i), (iv) and (v) are mentioned therein. Section 12 of the Act of 1955 deals with voidable marriages but it only speaks of the condition prescribed in Section 5 (ii). Therefore, their marriage, if true, would be neither void nor voidable under the Act of 1955. However, the

Act of 2006, which came much later, makes child marriages void if any one of the circumstances provided under Section 12 thereof is attracted. Such a marriage is voidable at the instance of the child, under Section 3 of the Act of 2006. These provisions operate independently and irrespective of the Act of 1955.

The Protection of Children from Sexual Offences Act, 2012 (for short, 'the Act of 2012'), was promulgated for the protection of children. Section 2 (1)(d) thereof defines a child to mean any person less than 18 years of age. The Act of 2012, however, did not choose to draw any distinction as to a girl of less than 18 who gets married out of her own choice and volition. Therefore, any sexual act or intercourse by the husband with such girl would constitute an offence under various provisions of the Act of 2012, though she is his wife.

Significantly, Exception 2 to Section 375 IPC states to the effect that sexual intercourse and sexual acts with a wife of over 15 years of age would not amount to rape. However, this provision was not altered when the Act of 2012 was brought onto the statute book. In effect, though the husband would not be liable to be prosecuted for rape under Section 376 IPC, if his wife is over 15 years of age, he would be liable to be prosecuted under the provisions of the Act of 2012, if she is less than the age of 18 years. The Legislature seems to have been unmindful of this aspect and continues to be so despite the lapse of 8 years since the enactment of the Act of 2012. Taking note of this in **Independent Thought vs. Union of India and another [(2017) 10 SCC 800]**, the Supreme Court held that Exception 2 to Section 375 IPC must be

construed and applied by substituting 'eighteen' for 'fifteen' in the context of the age of the wife.

It may be noted that the age of majority was altered once, but as on date it stands frozen at 21 years for boys and 18 years for girls. However. it is an acknowledged fact that children these days attain both physiological as well as psychological maturity long before they complete the aforestated ages of majority fixed for them by the statute long ago.

It is interesting to note that in their article **'Are Adolescents Less Mature Than Adults?'**, published in October, 2009, the authors, Laurence Steinberg, Temple University; Elizabeth Cauffman, University of California; Irvine Jennifer Woolard, Georgetown University; Sandra Graham, University of California, Los Angeles; and Marie Banich, University of Colorado, state that the notion that a single line can be drawn between adolescence and adulthood for different purposes under the law is at odds with developmental science. According to them, drawing age boundaries on the basis of developmental research cannot be done sensibly without a careful and nuanced consideration of the particular demands placed on the individual for 'adult-like' maturity in different domains of functioning. Thereafter, the authors summed up thus:

> '.....The results of the present study suggest that it is not prudent to make sweeping statements about the relative maturity of adolescents and adults, because the answer to the question of whether adolescents are as mature as adults depends on the aspects of maturity under consideration. By age 16, adolescents' general cognitive abilities are essentially indistinguishable from those of adults, but adolescents' psycho-social functioning, even at the age of 18, is significantly less

> mature than that of individuals in their mid-20s. In this regard, it is neither inconsistent nor disingenuous for scientists to argue that studies of psychological development indicate that the boundary between adolescence and adulthood should be drawn at a particular chronological age for one policy purpose and at a different one for another.'

In the context of the ability of persons less than 18 years of age to take responsibility for their decisions, Justice Antonin Scalia of the US Supreme Court, in his dissenting opinion in **Roper vs. Simmons [543 US 551]**, observed that given the nuances of scientific methodology and conflicting views, Courts - which can only consider the limited evidence on the record before them, are ill-equipped to determine which view of science is the right one.

Nearer home, in their **'Study on Social Maturity of Adolescent College Students in Colleges at Tiruchirappalli'**, in 2017, authors, P. Anitha Research Scholar, PG and Research Department of Social work, Bishop Heber College, Trichy, and Dr. A. Umesh Samuel Jebaseelan, Associate Professor, PG and Research Department of Social Work, Bishop Heber College, Trichy, state thus:

> 'Present study is an attempt in the direction of finding a significant relationship between social maturity various demographical parameters namely gender, age and the achievement motivation of adolescent students. It found that social maturity and age of the respondents are not related. And in this study, gender plays a significant relationship in developing social maturity. It indicates that excessive control, over protectiveness and strictly, punishment to the adolescent by family prevents development of social maturity of adolescent. To keep students isolated from the society affects inversely their social maturity. This study concluded that social maturity of adolescents would be higher when they perceive their home environment and academic centers as

> loving, demanding, nurturing and permissive. At the same time, it perceives lower when home environment and academic institution are perceived as controlling, punishing, and depriving. So, it is argued that social maturity can be improved by providing conducive and favorable environment to adolescents. It is always very important for the society to give them such type of environment in which they can improve their actions and behavior to make their own future and can add peace and success to the society.'

Perhaps, the above observations are a pointer as to how society should reform itself so that family ties and values can be restored without compromising on healthy and independent upbringing of children.

In any event, science recognizes the fact that children these days mature much faster than they did even a few decades ago. Taking note of this fact, the Parliament itself provided in the Juvenile Justice (Care and Protection of Children) Act, 2015, that it would be within the domain of a Juvenile Justice Board to determine as to whether a child in conflict with the law, who has completed or is over the age of 16 years, should face trial as an adult for the alleged offence. Therefore, a criminal act by a child of or over 16 years of age is now being treated on par with that of an adult, but a similar analogy has not been extended to a civil act of a child of the same age.

It is also a scientifically recognized fact that girls tend to be more mature than boys of the same age. That is the reason why there is a discrepancy even with regard to the age of majority stipulated by the statute in relation to the sexes. Therefore, a girl who has completed the age of 16 years and 10 months can be said to be of the age of discretion to the extent of at least knowing her own mind and as to what would be in her interest. In any event, even if such a girl is treated as a minor, the

parens patriae jurisdiction vesting in this Court under Clause 12 of the Letters Patent, referred to *supra*, requires this Court to consider as to what would be in the best interest of the minor while dealing with her case, be it in terms of her custody or otherwise.

Before proceeding further, it would be apposite to take note of diverse judicial opinions that came to be expressed on various issues that would have relevance for the purposes of adjudicating this case.

In **'Amnider Kaur and another vs. State of Punjab and another' [2010 Criminal Law Journal 1154]**, a learned Judge of this Court had occasion to consider a somewhat similar case. The issue before the learned Judge was whether the couple were entitled to seek protection from the girl's parents. The learned Judge found that Amnider Kaur was 16 years and 2 months of age at the time of her marriage. Reliance was placed upon **Ravi Kumar vs. State and another [2006 (1) RCR (Criminal) 41]**, a Division Bench judgment of the Delhi High Court, to contend that if the girl is above 16 years but below 18 years of age, she would attain the age of discretion and therefore, her marriage could not be said to be void or illegal. Reference was also made to other case law on similar lines. The learned Judge however relied upon the provisions of the Act of 2006 and observed that once a minor girl is enticed away from the lawful keeping of her guardian by the alleged husband, the marriage itself would be void in terms of Section 12 (a) thereof. The learned Judge accordingly held that he had no choice but to hold that the marriage was void. The learned Judge held that **Ravi Kumar** (*supra*) was a decision rendered before the Act of 2006 and was, therefore, of no relevance.

In **Jitender Kumar Sharma vs. State (Delhi) and another [2010 (4) RCR (Criminal) 20]**, a Division Bench of the Delhi High Court considered the case of a runaway couple, where both of them were minors. Jitender was 18 years while Poonam was 16 years old. Jitender filed the case seeking a writ of *habeas corpus* to produce Poonam and to hand her over to him. Police protection was also sought. Arguments were advanced before the Division Bench as to the validity of the marriage. The Division Bench adverted to the provisions of the Act of 1955 as well as the Act of 2006 and held that a child marriage would not be *ipso facto* void but may be rendered so if the circumstances enumerated in Section 12 of the Act of 2006 were established and would be voidable at the option of the child spouse in terms of Section 3 of the Act of 2006. The Division Bench further held that the mere fact that stricter punishment had been prescribed for offences under the Act of 2006 did not have any impact on the validity of such child marriages. The Bench thereafter dealt with the issue of custody. Reference was made to an earlier judgment of the Delhi High Court in **Neetu Singh vs. State [1999 (3) RCR (Criminal) 26]**, wherein it was held that even a minor girl cannot be kept in a Protection Home against her wishes. Taking note of the fact that Poonam had married Jitender, the Division Bench observed that her father no longer remained her natural guardian and that her husband, himself a minor, would have to be treated as her guardian. The Division Bench accordingly left Poonam free to go with Jitender.

In **Court On Its Own Motion (Lajja Devi) vs. State (Delhi) [2012 (4) RCR (Civil) 821]**, a Full Bench of the Delhi High Court dealt

with five questions formulated for its consideration, to this effect: (1) whether a marriage contracted with a female of less than 18 years and a male of less than 21 years could be said to be valid and whether the custody of the said girl can be given to the husband, (2) whether a minor can be said to have reached the age of discretion and thereby walk away from the lawful guardianship of her parents and refuse to be in their custody, (3) if yes, can she be kept in the protective custody of the State? (4) whether the FIR under Section 363 IPC or even under Section 376 IPC can be quashed on the basis of the statement of such a minor that she had contracted the marriage of her own, and (5) whether there may be other presumptions also which may arise.

Having considered various relevant statutes and case law, the Full Bench observed that the object behind enacting the Act of 2006 was to curb the menace of child marriages which is still prevalent in this country and is more common in rural areas. The Bench found that in the statutory scheme obtaining even after the promulgation of the Act of 2006, a child marriage could not be treated as *void ab initio* or as a nullity. Noting the loopholes which remain in the context of various laws on the subject, some of recent origin and some of ancient vintage, the Full Bench concluded as regards question No.1 that a marriage contracted with a female of less than 18 years or a male of less than 21 years would not be a void marriage, unless Section 12 of the Act of 2006 applied, but a voidable one under Section 3 thereof.

Dealing with questions No.2 and 3, the Full Bench noted the scheme of the Hindu Minority and Guardianship Act, 1956 (for short, 'the

Act of 1956'), and opined that there cannot be a straight forward answer and it would have to depend upon the circumstances for the Court to decide as to what would be in the interest of the minor girl.

As regards question No.4, the Full Bench held that if the girl is more than 16 years of age and makes a statement that she went with her own consent and it can be accepted, the Court would be within its power in quashing the proceedings under Sections 363 and 376 IPC. However, the Full Bench cautioned that there can be no straitjacket formula to be applied and the Court has to be careful to ensure the girl's right to get the marriage nullified under Section 3 of the Act of 2006. Further, the attending circumstances, which would include the maturity and understanding of the girl, her social background, the age of the boy and girl, would also have to be taken into consideration.

As regards question No.5, the Full Bench stated that no further observations needed to be made in the light of the discussion in the body of the judgment insofar as that question was concerned.

In **Neelam Rani and another vs. State of Haryana and another [2011 (1) RCR (Civil) 636]**, a learned Judge of this Court was dealing with the plea of a runaway couple for protection. The age of Neelam Rani was in dispute but the learned Judge was of the opinion that she had reached the age of discretion, as she was over 17 years even as per the claim of her parents. She had married Pawan Kumar against the wishes of her parents but out of her own free will. The learned Judge observed that in exercise of jurisdiction under Section 482 Cr.P.C., this Court would not go into the validity or otherwise of the marriage for that

would be within the domain of the matrimonial Court of competent jurisdiction. The parties were accordingly relegated to avail their remedies as per law but liberty was given to them to approach the police authorities setting out their grievances, and the same were directed to be looked into and considered in accordance with law.

In **Jagdeep Singh and another vs. State of Punjab and others [2017 (3) HLR 293]**, a learned Judge of this Court found that the girl was a minor at the time of solemnization of her marriage. However, placing reliance on case law, the learned Judge directed that the girl should be set free and allowed to accompany her husband. Reference in this regard was made by the learned Judge to the Division Bench judgment of this Court in **Bhim Sain vs. State of Punjab and others** (LPA-2146-2016, decided on 27.10.2016). In **Baljeet Kaur and another vs. State of Punjab and another [2017 (3) HLR 107]**, the same principle was again reiterated and affirmed by the learned Judge.

In LPA-2146-2016, titled **Bhim Sain vs. State of Punjab and others**, decided on 27.10.2016, a Division Bench of this Court was dealing with an appeal filed against the order of a learned Judge directing the minor girl to be sent to the Nari Niketan. The reason for doing so was that she intended to perform her marriage with the appellant without parental consent. The Division Bench noted that the girl was on the verge of attaining the age of majority and was short of doing so by just one week. The Bench observed that an individual, even a minor, would have the freedom to choose and could not be detained in a Nari Niketan against her wishes as it would be violative of her fundamental rights.

In **Sonu Paswan vs. State of UP and another [2014 (7) RCR (Criminal) 1539]**, a learned Judge of the Allahabad High Court observed that once Section 12 of the Act of 2006 had no application, the child marriage would not be liable to be declared void and the natural guardian of the minor girl would become her husband, in terms of Section 6(c) of the Act of 1956. The learned Judge further noted that it would not be in the welfare of a female to remain in a Nari Niketan for a prolonged period, particularly when she wanted to join the company of her husband, who would be her natural guardian in the eye of law. The learned Judge accordingly directed that the custody of the minor girl be released by the authorities of the Nari Niketan in favour of her husband.

In CRWP-5531-2020, titled **Gaurav vs. State of Punjab and others**, decided on 04.08.2020, a learned Judge of this Court denied grant of a *writ of habeas corpus* on the ground that the girl had been sent to the Children's Home by the Magistrate of competent jurisdiction who was dealing with the criminal case registered against her husband. The learned Judge opined that the minor girl could not be said to be in the illegal custody of the Children's Home or that she was wrongly confined there. The learned Judge observed that consent of a minor was no consent in the eye of law and accordingly dismissed the writ petition.

In CRWP-727-2020 titled **Parminder Kaur and another vs. State of Punjab and others**, decided on 30.01.2020, a learned Judge of this Court denied protection to the runaway couple on the ground that a case had already been registered against the husband under Sections 363 and 366-A IPC and directed the minor girl, who was present in Court, to

be handed over to the Punjab Police for production before the concerned Magistrate for further proceedings. The parents of the girl were given liberty to make an appropriate application for her custody.

In CRWP-5509-2020, titled **Harpreet Kaur and another vs. State of Punjab and others**, decided on 26.08.2020, a learned Judge denied protection to the runaway couple on the ground that they had not disclosed full facts, inasmuch as the registration of the criminal case against the husband for kidnapping the minor girl was suppressed.

In CRWP-6912-2020, titled **Sukhwinder Singh and another vs. State of Punjab and others**, decided on 25.09.2020, a learned Judge of this Court denied protection to a runaway couple on the ground that the child marriage had been undertaken in violation of the provisions of the Act of 2006 and, while dismissing the writ petition, the learned Judge issued a slew of directions for proper implementation of the Act of 2006.

Now, coming to a crucial aspect, it may be noted that Section 12 (a) of the Act of 2006 speaks of the 'child being taken or enticed out of the keeping of the lawful guardian' in the context of rendering such child's marriage void. On the same lines, Section 361 IPC, dealing with kidnapping from lawful guardianship, provides that whoever 'takes or entices' any minor out of the keeping of the lawful guardian commits the offence of kidnapping.

In **S. Varadarajan vs. State of Madras [AIR 1965 SC 942]**, a 3-Judge Bench of the Supreme Court dealt with the scope of Section 361 IPC and more particularly, the interpretation of the words 'takes or entices any minor' found therein. The Supreme Court observed that there is a

distinction between 'taking' and 'allowing a minor to accompany a person'. *Per* the Supreme Court, the two expressions are not synonymous though it cannot be said that, in every circumstance, the same could not be regarded as meaning the same thing for the purposes of Section 361 IPC.

The Supreme Court observed that it was limiting itself to a case where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing and voluntarily joins the accused person. In such a case, the Supreme Court held that it could not be said that the accused had taken her away from the keep of her lawful guardian and something more would have to be shown - that some kind of inducement was held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

The Supreme Court however held that it would be sufficient if the prosecution established that, though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. It was held that if evidence to establish one of those two things is lacking, it would not be legitimate to infer that the accused is guilty of taking the minor out of the keep of the lawful guardian merely because, after she had actually left her guardian's house and joined the accused, he helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl but that part, in the opinion of the Supreme Court, fell short of an

'inducement' to the minor to slip out of the keeping of her lawful guardian and would therefore, not tantamount to 'taking'.

S.Varadarajan (*supra*) was considered by a 2-Judge Bench of the Supreme Court in **Moniram Hazarika vs. State of Assam [(2004) 5 SCC 120]**. This judgment dealt with Sections 361 and 366 IPC. On facts, the Supreme Court held that the plea of the appellant that the minor girl had voluntarily accompanied him with a view to marry him and that there was no 'inducement' or 'taking away', as contemplated under Section 361, could not be accepted. The Supreme Court found that the material on record showed otherwise. Reference was made to the observations in **S. Varadarajan** (*supra*) that it would be sufficient if the prosecution established that the accused had, at some earlier stage, solicited or persuaded the minor to leave the father's protection. The larger principle laid down in **S. Varadarajan** (*supra*) was accordingly held to be inapplicable. Therefore, this judgment did not dilute the principle laid down by the 3-Judge Bench but merely distinguished the case on facts.

Much earlier, in **Jai Narain vs. State of Haryana [1969 PLR 688]**, a learned Judge of this Court considered the scope of the word 'takes' in Section 361 IPC. On facts, the learned Judge found that the accused had never compelled the minor girl to leave her house. Further, the learned Judge found that the girl herself desired to leave the house because she thought it would be safe for her to do so. The learned Judge therefore held that no offence was made out under Section 361 IPC.

Mr. Ravi Malik, learned counsel, would contend that it is not open to this Court to decide Preeti's custody issue as the writ petition is

only for protection, but this Court is not persuaded to agree. As already noted *supra*, this Court has always exercised *parens patriae* jurisdiction in protection matters when the girl was found to be a minor. Unfortunately, there was no consistency as to how decisions in these cases turned. That was obviously because each case ultimately turned upon its own facts. It cannot therefore be said that there is any dichotomy, as such, in the opinions expressed in the judgments cited *supra*, warranting reference of this matter to a Division Bench. The case is amenable to disposal on the strength of its own facts and taking a cue from settled legal principles.

Going by the principle laid down in **S. Varadarajan** (*supra*) as long back as in the year 1964, as explained in **Moniram Hazarika** (*supra*), the use of the words 'taken or enticed out of the keeping of the lawful guardian' in Section 12 (a) of the Act of 2006, would require that, at some point of time, Sahil should have induced, solicited or persuaded Preeti to run away from the custody of her parents, respondents No.4 and 5.

However, going by the statements made in the petition as well as in the representation of the petitioners on 23.06.2020, long before this case crystallized, Preeti had claimed that she overheard her parents planning her marriage with a boy of their choice and snatched the opportunity, when presented, to run away from home. There is no mention that, at that stage, Sahil either solicited or persuaded Preeti to leave home. That particular act on her part seems to have been completely on her own. On the other hand, she claimed that it was she who contacted Sahil after fleeing from home. In effect, Section 12 (a) of the Act of 2006 would have

no application and the marriage performed on 23.06.2020 cannot be said to be void on that ground.

Section 7 of the Act of 1955 prescribes the ceremonies of a Hindu marriage. Section 7 (1) states that a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto, while sub-section (2) thereof states that where such rites and ceremonies include the Saptapadi, that is, the taking of seven steps by the bridegroom and bride jointly before the sacred fire, the marriage becomes complete and binding when the seventh step is taken. The photographs filed before this Court, along with the petition, show Preeti and Sahil walking around the ceremonial fire and it is stated that they solemnized their marriage in a temple. No certificate seems to have been issued in proof of the marriage but law does not require any such certification. Registration of the marriage, which is yet to be made compulsory, can be effected any time *post facto*. In any event, it is not for this Court to deny the factum of the marriage performed by Preeti and Sahil or affirm the validity thereof. *Prima facie*, the photographs indicate that there was a marriage ceremony with Saptapadi and the parties thereto, Preeti and Sahil, stand by it and affirm that they were duly married as per rites and customs. Further, Neelam, Sahil's mother, accepts Preeti as her daughter-in-law and is prepared to stand by their marriage.

As on date, Preeti is 10 months short of attaining majority. It is not as if, upon the clock striking 12 midnight on the eve of her 18th birthday, Preeti would magically assume the mental maturity and wisdom to claim the status of an adult. The age of majority as prescribed must

therefore be construed and interpreted in the context of the law for which it is being considered and in a case of this nature, where the minor is certain and unshaken in her opinion and desire, it would not be right and proper for this Court to brush aside her views on the ground that she is not 18 years of age as on date and is only 17 +.

This Court therefore does not deem it appropriate to direct that Preeti's custody should be forcibly entrusted to her parents against her wishes or that she should be kept in a Protection Home till she attains the age of 18 years. It would suffice at this stage if Preeti is allowed to go with Neelam, Sahil's mother, and remain with her till she attains the age of 18 years. Neelam shall be bound by the affidavit filed by her before this Court and take care of Preeti to the best of her capacity and ability. However, as Neelam is not her legal guardian and she is being entrusted Preeti's custody only as per the desire and wish expressed by Preeti herself, it would be appropriate that the Child Welfare Committee, Sonipat, monitors Preeti's well-being till she attains the age of 18 years while she remains in Neelam's custody. The Chairperson of the Child Welfare Committee, Sonipat, is accordingly directed to depute a Child Welfare Officer to randomly visit Neelam's residence at Kakroi, District Sonipat, twice a month to ensure that Preeti is being well cared for and to ascertain whether she has any complaints. The Child Welfare Committee, Sonipat, shall take on record the reports of such Child Welfare Officer and monitor the case till Preeti attains the age of 18 years.

The Superintendent of Police, Sonipat, shall however remain mindful of the representation made by the petitioners on 23.06.2020 and

the order passed by this Court on 26.06.2020 in this writ petition and continue to extend protection to the petitioners, insofar as any physical threat from respondents No.4 and 5 or their family members is concerned.

The writ petition is disposed of with the above directions.

A copy of this order shall be forwarded to the Chairperson, Child Welfare Committee, Sonipat, for necessary further action, as indicated hereinabove.

Pending miscellaneous applications, if any, shall stand disposed of in the light of this final order.

No order as to costs.

October 16th, 2020 (Sanjay Kumar)
Kang Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes