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(2008) 3 RCR (Cri) 376

Pardeep Kumar Singh v. State of Haryana

PUNJAB AND HARYANA HIGH COURT

BEFORE M.M.S. BEDI, J.

CrI. Misc. No. 30025-M of 2007.

D/d. 30.11.2007.

Pardeep Kumar Singh ... Petitioner

Versus

State of Haryana ... Respondent

JUDGMENT

M.M.S. BEDI, J. — This order will dispose of a bunch of 13 petitions as the common question of law and facts arise in the all the said petitions.

2. Apprehending threat to their life and liberty at the hands of the State authorities i.e. Police on the instance of their family members, a large number of young couples have approached this Court for a direction to the respondents that interference in their married life may be prohibited, taking the shelter of Article 21 of the Constitution of India. Pendency of about 40 petitions for motion hearing by young couples on the cause list of this Court today is indicative of the fact that there has been remarkable change in the last few decades revolutionizing the entire outlook by bringing radical changes in the attitude and approach of the society towards various social practices, calling upon the Courts to consider the scope of the right of life and liberty invoked by the young couples of 'run away marriages' or 'rebellion marriages' performed against the wishes of the other members of the society i.e. their parents. The common features of all the above said petitions are as follows :

- (i) the petitioners claim themselves to be majors and having married recently against the wishes of the parents of one of the spouses;
- (ii) the petitioners in all the cases apprehend threat to their life and liberty at the hands of the police officials;
- (iii) the petitioners have an apprehension that after the arrest of the husband the wife will be taken away by her parents against her wishes or will be harmed in one way or the other;
- (iv) a direction has also been sought for in all the cases for protection of life and liberty at the hands of the private respondents who happen to be the family members of either of the spouses.
- (v) the marriage in all the cases is not registered with any authority but the petitioners are supported by some photographs indicating that some ceremony of marriage has already taken place.
- (vi) it appears that indirectly the petitioners want a sanction or approval of their marriage from the High Court to protect them.
- (vii) there are certain instances of inter-caste marriages which is not acceptable to the society or the family members.

3. The petitioners in all the above said cases have approached the Court on the basis of the few judicial precedents, for instance in *Lata Singh v. State of U.P.*, 2006 (3) RCR (Criminal) 870 : 2006 (3) RCR (Civil) 738 : 2006 (2) Apex Criminal 670 : AIR 2006 SC 2522, where a young woman had married out of her free will and a complaint under Sections 366, 368 IPC had been filed by her brother against her husband and his relatives, the police had submitted the final report, despite a statement of the petitioner's wife under Section 164 Cr.P.C. that she married at her own will. While quashing the entire criminal proceedings, a direction was issued by the Apex Court to the effect that administration/police authorities throughout the country would see to it that if any boy or girl who is major undergoes inter-caste or any religion marriage as a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

4. The reliance has also been placed on *Manish Singh v. State (Government of N.C.T.) and others*, 2006 (1) RCR (Criminal) 653 : 2006 (1) RCR (Civil) 414 : 2006 (1) Law Reports on Crimes 414 (Delhi). In the said case, considering the run away marriages, the Court quashed an FIR under Section 363 IPC where a girl of 17 years, on the verge of maturity had accompanied the boy of her own volition without any kind of enticement or

inducement or force from any one was alleged to have been kidnapped, observing as follows :

“18. ‘Run Away Marriages’ are manifestation of a generational change due to variety of factor, including increased interaction between the sexes, with young boys and girls attaining maturity rapidly. It is a complex problem with interplay of social, economic, religious, caste, educational factors, including sex education and vulnerability and backwardness of the weaker sex having its impact. The Child Marriage Restraint Act, 1929 as well as relevant provisions of the Hindu Marriage Act are social legislations aimed at protection and development of the vulnerable sex and have to be interpreted and worked accordingly. The consequences of considering such marriages as void or voidable need to be evaluated since the State as well as the social reformists who have not been successful to change the mindset of the people tuned to early marriages. By an estimate, prevalence of child marriages in the major States of West Bengal, Rajasthan, Bihar and Madhya Pradesh varies from 56 to 59%. Moreover, it is also to be noted that any adverse fall out of any law that makes such underage marriages as void or voidable would be borne by none other than the women and their progeny.

It is for the Parliament to consider whether the present provisions of the Hindu Marriage Act and the Child Marriage Restraint Act have proved insufficient or failed to discourage child marriages and to take such remedial steps, as are required in their wisdom.

19. What we as Judges are ordained to do, is to interpret the law as it stands, and that is precisely what we have done. We have added the above clarification since erroneous or misreporting of judicial pronouncements on vital issues affecting a large sections of the population may erode public confidence in judiciary, essential for the very preservation of rule of law.”

5. As the runaway marriages of young girls and boys are increasing, a reference to the concept of marriages in India has to be made. The institution of marriage, if studied and traced in context to Rigvedic period and Manu Samriti, is a sacramental, permanent, indissoluble, eternal and holy union and not a contractual union. But the said elements, to some extent stand diluted with the recognition of divorce and statutory recognition to remarriages. At present, the Hindu marriage has thus not remained a sacramental marriage and it has also not become solely a contract though it has semblance of both. Marriage has a semblance of a contract as consent is of some importance under the Act. It has a semblance of a sacrament as in most marriages a sacramental ceremony is still necessary. The Apex Court in *Seema v. Ashwani Kumar*, 2006 (1) RCR (Criminal) 963 : 2006 (1) RCR (Civil) 643 : 2006 (1) Apex Criminal 359 : (2006) 2 SCC 578 held that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States, where the marriage is solemnized. Various reasons for said requisition have been discussed in detail in the said judgment. The Apex Court has further directed the States and Central Government to take steps to notify the procedure for registration by respective States by amending the existing Rules, if any, or by framing new rules; the officer appointed under the said rules of the States shall be duly authorized to register the marriages. The consequence of non-registration of marriages or for filing false declaration shall also be provided for in the said Rules. It was observed in the said judgment that though registration of a marriage itself cannot be a proof of valid marriage *per se* and would not be the determinative factor relating the validity of the marriage yet it has a great evidentiary value in family matters. As a natural consequence, a fact of non-registration would be that the presumption available from registration of marriage would be denied to a person whose marriage is not registered. On April 15, 2005, in *Seema v. Ashwani Kumar*, (2005) 4 SCC 443, an interim direction had been issued by the Hon'ble Supreme Court to all the State Governments and Union Territories to issue orders/executive instructions authorizing officials to keep record of marriages so that the same may be placed as evidence in matrimonial proceedings until a suitable legislation, therefor, is framed.

6. Following the directions in *Lata Singh's case* (supra) it would have been very easy to dispose of all the petitions with a general direction to the concerned Senior Superintendents of Police/Superintendents of Police of different areas to protect the life and liberty of the petitioners, but a few instances have come to the knowledge of this Court which are being discussed hereinafter calling for carving out some exceptions and requiring minute consideration for laying down certain legal principles which could strike a balance between the right of personal liberty of the couples of ‘run away marriages’ and the requirement of the Society and procedures so that the process of the Court is not misused.

INSTANCES OF MISUSER

7. As the general directions issued by the Courts directing the police authorities to protect the life and liberty of couples of ‘run away marriages’ are some times misused, it would be relevant to refer to few instances which are as follows :

(i) In Criminal Writ Petition No. 941 of 2007, Resham Singh and Amarjit Kaur, claiming themselves to be majors having married against the wishes of the parents of Amarjit Kaur, had filed a petition for the protection of their life and liberty through CrI. Misc. No. 24954-M of 2007, which was disposed of on April 24, 2007, with a direction to S.S.P. to look into the matter and take steps to protect the life and liberty of the couple after determining the authenticity of the averments. Amarjit Kaur subsequently realized that she had been enticed and allured by Resham Singh and she was made to approach the High Court but as a matter of fact, Resham Singh was a already married person having three children. She was made to sign certain blank papers which were used to file the petition in the High Court and to procure an order of protection. After she returned to her parents, Resham Singh filed a *habeas corpus* petition bearing CrI.W.P.No. 941/2007 against the family members of Amarjit Kaur with a direction that Amarjit Kaur be produced in the Court and that her parents should not interfere in his peaceful married life.

Sequel to the notice issued to the family members of Amarjit Kaur, she had put in appearance in the Court on November 15, 2007 and stated that the petitioner used to be a visitor to the tenant of the house of her father. He had enticed and allured her with false promises and she was made to sign certain blank papers which were used to file a petition in the High Court and procure an order of protection. She stated that as a matter of fact Resham Singh was already married having three children. As her stay with her parents is not against her wishes, there was no alternative for this Court except to dismiss the said habeas corpus petition.

(ii) In case bearing *Cri. Misc. No. 46347-M of 2007, Sunita and another v. State of Punjab*, a direction has been sought against the official respondents for providing security to the petitioners besides a direction that petitioners should not be harassed in any criminal complaint, if lodged by respondents No. 4 to 6 or any relative of the petitioners alleging that the petitioners are majors having married on their own against the wishes of their parents. But a surprising feature was brought to the notice of the Court in the reply filed by respondents No. 5 to 8 that petitioner No. 1 has even stated her name wrongly as Sunita instead of her original name Karmo. Karmo, as a matter of fact is married to Jasbir on July 6, 1997. Out of her wedlock, two children were born. A copy of the ration card has been placed on the record to show that petitioner No. 1 who claims herself to be married to petitioner No. 2, is actually wife of Jasbir and mother of two children, namely, Shabnam and Rohit.

(iii) In *Crl. Misc. No. 49310-M of 2007, Rajwinder Kaur etc. v. State of Punjab*, Rajwinder Kaur and Jagbir Singh petitioners have filed a petition for direction to the police as well as to the private respondents No. 2 and 3 not to interfere in their peaceful married life or to intrude into their privacy. They have sought protection to their life and liberty at the hands of respondents No. 4 and 5 in the light of the judgment of *Lata Singh's case* (supra).

On notice having been issued to the State, it has been informed that an FIR No. 276 dated October 14, 2007, under Sections 363, 366-A IPC stands registered against petitioner No. 2. Petitioner No. 1 has also made a statement to the police that she was enticed by Jagbir Singh to marry him. She had stolen a sum of Rs. 25,000/- from her home alongwith some gold and gone with petitioner No. 2. He had, against her wishes committed rape upon her. Offence under Section 376 IPC has also been added in the FIR. Proceedings for declaring him proclaimed offender have been finalized. The facts of *Rajwinder Kaur's case* clearly indicate that the petition for protection of life and liberty was filed in this Court merely to create a record regarding marriage which had not actually taken place, with an oblique motive to get a stamp of validation of marriage or to create a defence in the criminal case which had been filed against petitioner No. 2.

(iv) In *Crl. Misc. No. 51130-M of 2007*, a petition has been filed by Kulwinder Kaur and Rajinder Singh for protection of their life and liberty, claiming to have married having attained the age of maturity. An affidavit of Kulwinder Kaur has been placed on record that her date of birth is June 28, 1989. In this case, on the basis of police record, it has been informed that petitioner No. 1, as per her matriculation certificate is about 15 years of age and her date of birth is June 6, 1993 and a criminal case under Section 363 IPC stands registered against petitioner No. 2 having kidnapped petitioner No. 1. An FIR No. 177 of 2007 under Sections 363-A, 366 and 120-B IPC Police Station Sultanpur Lodhi is stated to have been registered against petitioner No. 2. Concealing the factum of registration of case, this petition for protection has been filed.

In reply, a copy of the matriculation certificate of petitioner No. 1 has been attached showing her date of birth as June 6, 1993. The date of marriage has been given as November 5, 2007, but no document has been placed on record for arriving at a conclusion that marriage has actually taken place. Only a photograph with garlands has been attached with the petition. In this case, the petition seems to have been filed with an objective to create a defence in the criminal case registered against petitioner no. 2.

(v) In case of *Hira Lal and Ramandeep Kaur v. State of Punjab and others, Crl. Misc. No. 28412-M of 2007*, decided on May 4, 2007, the couple had approached this Court for a direction to the SSP, Jalandhar and to the concerned SHO to safeguard the lives of the couple by providing police protection and not to let the father of the girl or anybody else to interfere in the life and liberty of the said petitioners or to harass them in any manner, claiming that they had married against the wishes of the family members of the girl. Vide order dated May 4, 2007, the SSP and the concerned SHO were given directions to help the said couple and to protect their life and liberty. When the directions were issued on May 4, 2007, the father of the girl Ramandeep Kaur had already committed suicide on May 3, 2007 and an FIR stood registered against Hira Lal and his other family members for having abetted the commission of suicide as Hira Lal used to give threat to the father of Ramandeep Kaur to kill him and alongwith his family members used to taunt and harass the deceased. The factum of suicide was not brought to the notice of this Court intentionally while obtaining the orders of protection of the life and liberty.

(vi) In *Crl Misc. No. 50162-M of 2007, Seena Bibi and Mohd. Roshan* have filed a petition for protection of their life and liberty claiming themselves to be married. But in reply filed by the private respondents, it was disclosed that the marriage, if any, between the petitioners was void as petitioner No. 1 Seena Bibi was the legally wedded wife of Sepahia son of Mir Hussain, as such, she cannot be granted the protection. Petitioner No. 1 is alleged to have already married the said Sepahia on January 19, 2005 at Gurdaspur as per Mohammedan rites and ceremonies.

8. The above noted references have been mentioned hereinabove to quote the examples regarding the misuser of the process of the Court by the young rebellion couples who under the garb of having attained majority have approached the High Court, not with a *bona fide* desire for getting protection but solely to create an evidence regarding the approval of their marriage by the High Court in the garb of the directions of this Court,

- (i) the case of *Amarjit Kaur* shows that a married person having three children after enticing and alluring a girl approached this Court to create a defence for the criminal act having committed by him.
- (ii) The case of *Sunita* is a glaring example where a married lady being mother of two children has made an attempt to seek a stamp of this Court approving her marriage by moving an application for protection.
- (iii) Case of *Rajwinder Kaur* is an example where a young girl had been enticed by Jagbir Singh into marriage. He made her run away from her home stealing Rs. 25,000/-, the boy concealing the fact that a criminal case under Section 376 IPC stands registered, approached this Court. The case of *Rajwinder Kaur and Jagbir Singh*, above mentioned shows that petition for protection of life and liberty has been moved in this Court with an oblique motive of Jagbir Singh to create a defence in criminal case registered against him under Section 376 Cr.P.C. for enticing Rajwinder Kaur and committing rape upon her.
- (iv) In the case of *Kulwinder Kaur and Rajinder Singh*, concealing the factum of girl being minor and to create a defence in criminal case registered against the boy, petition for protection of life and liberty has been filed.
- (v) The case of *Mira Lal and Ramandeep Kaur*, is not a case of honour killing but a case where the father of the girl has committed suicide and the young couple has approached the Court for protection of their life and liberty with an oblique motive to create an evidence for defence that they are married besides having protection under the orders of the High Court.
- (vi) In the case of *Seena Bibi* despite she being already married, she has moved an application for protection of life and liberty on the ground that she stands married to another person, namely, Mohd. Roshan, co-petitioner with her.

9. The concept of freedom and liberty seems to have been misunderstood by the young couples of "rebellion marriages". The evolution of the State from "police State" to a "welfare State" is the ultimate measure and accepted standard of democratic society which is an avowed Constitution mandate. No doubt, the main function of the democratic government is to safeguard the liberty of the individual but its exercise is subject to social control. If the liberty is absolute and unlimited and not guided by morality, it becomes anti-social. The rule of law in a democratic society aims not only to protect the fundamental rights of the citizens but also to establish an egalitarian social order. Liberty has to be controlled in the interest of society but at the same time, the social interest must never be overbearing to justify the deprivation of individual liberty. Liberty cannot stand alone but has to be enjoyed alongwith other virtues like morality, law, justice, common good, for the orderly progress and social stability. Man being a rational individual has to live in harmony with the similar equal rights of others. The concept of personal liberty in context to Article 21 of the Constitution of India has been explained by Hon'ble Justice K. Ramaswamy in *Kartar Singh v. State of Punjab*, 1994 (2) RCR (Criminal) 168 : 1994 (3) SCC 569, as follows :

"373. The foundation of Indian political and social democracy, as envisioned in the preamble of the Constitution, rests on justice, equality, liberty, and fraternity in secular and socialist republic in which every individual has equal opportunity to strive towards excellence and of his dignity of person in an integrated egalitarian Bharat. Right to justice and equality and stated liberties which include freedom of expression, belief and movement are the means for excellence. The right to life with human dignity of person is a fundamental right of every citizen for pursuit of happiness and excellence. Personal freedom is a basic condition for full development of human personality. Article 21 of the Constitution protects right to life which is the most precious right in a civilized society. The trinity i.e. liberty, equality and fraternity always blossoms and enlivens the flower of human dignity. One of the gifts of democracy to mankind is the right to personal liberty. Life and personal freedom are the prized jewels under Article 19 conjointly assured by Articles 20(3), 21 and 22 of the Constitution and Article 19 ensures freedom of movement. Liberty aims at freedom not only from arbitrary restraint but also to secure such conditions which are essential for the full development of human personality. Liberty is the essential concomitant for other rights without which a man cannot be at his best. The essence of all civil liberties is to keep alive the freedom of the individual subject to the limitations of social control envisaged in diverse articles in the chapter of Fundamental Rights Part III in harmony with social good envisaged in the Directive Principles in Part IV of the Constitution. Freedom cannot last long unless it is coupled with order. Freedom can never exist without order. Freedom and order must coexist. It is essential that freedom should be exercised under authority and order should be enforced by authority which is vested solely in the executive. Fundamental rights are the means and the directive principles are essential ends in a welfare State. The evolution of the State from police State to a welfare State is the ultimate measure and accepted standard of democratic which is an avowed constitutional mandate. Though one of the main functions of the democratic government is to safeguard liberty of the individual, unless its exercise is subject to social control; it becomes anti-social or undermines the security of the State. The Indian democracy wedded to rule of law aims not only to protect the fundamental rights of its citizens but also to establish an egalitarian social order. The individual has to grow within the social confines preventing his unsocial or unbridled growth which could be done by reconciling individual liberty with social control. Liberty must be controlled in the

interest of the society but the social interest must never be overbearing to justify total deprivation of individual liberty. Liberty cannot stand alone but must be paired with a companion virtue; liberty and morality; liberty and law; liberty and justice; liberty and common good; liberty and responsibility, which are concomitants for orderly progress and social stability. Man being a rational individual has to live in harmony with equal rights of others and more differently for the attainment of antithetic desires. This intertwined network is difficult to delineate within defined spheres of conduct within which freedom of action may be confined. Therefore, liberty would not always be an absolute licence but must arm itself within the confines of law. In other words there can be no liberty without social restraint. Liberty, therefore, as a social conception is a right to be assured to all members of a society. Unless restraint is enforced on and accepted by all members of the society, the liberty of some must involve the oppression of others. If liberty be regarding a social order, the problem of establishing liberty must be a problem of organizing restraint which society controls over the individual. Therefore, liberty of each citizen is borne of and must be subordinated to the liberty of the greatest number, in other words common happiness as an end of the society, lest lawlessness and anarchy will tamper social weal and harmony and powerful courses or forces would be at work to undermine social welfare and order. Thus the essence of civil liberty is to keep alive the freedom of the individual subject to the limitation of social control which could be adjusted according to the needs of the dynamic social evolution.

374. The modern social evolution is the growing need to keep individual to be as free as possible, consistent with his correlative obligation to the society. According to Dr. Ambedkar in his closing speech in the constituent Assembly, the principles of liberty, equality and fraternity are not to be treated as separate entities but in a trinity. They form the union or trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality. Equality cannot be divorced from liberty. Nor can equality and liberty be divorced from fraternity. Without equality, liberty would produce supremacy of law. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality would not become a natural course of things. Courts, as sentinel on the *qui vive*, therefore, must strike a balance between the changing needs of the society for peaceful transformation with orders and protection of the rights of the citizen.

375. As seen, one of the functions of the State is to maintain peace and order in the society. As its part, State is not only the prosecutor of the offender but also the investigator of crime. To facilitate such investigation police has been given wide powers to arrest the suspect without warrant, interrogate him in custody, search and seize incriminating material, to collect the evidence and to prosecute the offender. Deprivation of dignity of person, self-respect and inviolable right to life, would only be within the prescribed limits set down by laws; assiduously supervised by courts; and executive excesses strictly be limited. Excessive authority without liberty is intolerable. Equally excessive liberty without authority and without responsibility soon becomes intolerable. Lest the freedoms and fundamental rights become sacrificial objects at the altar of expediency. Unrestricted liberty makes life too easy for criminals and too difficult for law abiding citizens. In a free society too many crooks blatantly break the law, blight young lives, traffic in drugs and freely indulge in smuggling and claim fundamental rights to exploit weak links of law, indulge in violence and commercial camouflage. Our values are drastically eroded because many a man with no more moral backbone than a chocolate éclair claim the freedom and free action which results inevitably in increasing the members of violent criminals."

10. A perusal of the above paragraphs makes it clear that freedom and the order must co-exist. Essence of civil liberty is to keep alive the freedom of the individual subject to the limitation of social control which could be adjusted according to the needs of the dynamic social evolution. The Courts must strike a balance between the changing needs of the society for physical transformation with orders and protection of the rights of the citizens. *Liberty cannot stand alone but must be paired with a companion virtue; liberty and morality; liberty and law; liberty and justice; liberty and common good; liberty and responsibility, which are concomitants for orderly progress and social stability. Man being a rational individual has to live in harmony with equal rights of others and more differently for the attainment of antithetic desires.* Unrestricted liberty makes life too easy for law-breakers and too difficult for law abiding citizens.

11. Chief Justice Warren Burger addressing American Bar Association in 1970, had observed that in a democratic society, the Court systems play an essential role in seeing that neither licence nor tyranny becomes dominant.

12. The concept as enshrined in Article 21 of the Constitution of India was examined in depth by the Apex Court in AIR 1950 SC 27, *A.K. Gopalan v. State of Madras*. Patanjali Sastri, J. observed as follows :

"Per Patanjali Sastri, J. - It is a misconception to think that constitutional safeguards are directed against individuals. They are as a rule directed against the State and its organs. Protection against violation of the rights by individuals must be sought in the ordinary law. Article 21 is not designed to afford protection against infringements by the executive or individuals."

13. The scope of right of life and liberty as enshrined in Article 21 of the Constitution of India reads as under :

"21. Protection of life and personal liberty.

No person shall be deprived of his life or personal liberty except according to procedure established by law."

14. The majority view in *A.K. Gopalan case* (supra) was that the procedure contemplated by Article 21 of the Constitution is that the procedure must be right, just and fair and not arbitrary, fanciful or oppressive. In order that the procedure is right, just and fair, it should conform to the principle of natural justice, i.e., 'fair play in action'. It has also been held in the said case that Article 21 is to be strictly construed against State and in favour of the persons whose rights are affected. Article 21 was held to be a constitutional command to State to preserve the basic human rights of every person. Taking into consideration the concept of life and liberty and applying the same to the cases of young couples who have entered into rebellion marriage against the wishes of their parents, it is held that so far as the protection of life and liberty of such citizens are concerned, these can be enforced against the State agencies to watch that any procedure which is not right, just and fair, should not be adopted by the official State agencies but so far as protection of the rights, against private persons are concerned, the Constitutional right under Article 21 of the Constitution cannot be enforced against the private individuals. The legal remedy against the private respondents violating the liberty of the petitioners would be under the other penal law. In case, any substantive offence is committed by any private individual, it is always open to an aggrieved party to adopt the due procedure of law.

15. The next question which arises for determination is as to what safeguard can be granted to the petitioners to protect them from the unfair and unjust procedures adopted to deprive them of their life and liberty at the instance of their family members. The plea of all the petitioners in these cases is that the petitioners have got apprehension that they would be harassed by the police at the instance of their family members as they had married against the wishes of their parents. The general allegations in all the petitions are that the complaints have been filed by the parents of the girls alleging that she had been abducted or kidnapped by the boy against her wishes. In few cases, criminal cases have also been registered for abduction and kidnapping. Once the boy is arrested, further apprehension is that the girl would be forcibly taken away by her parents and she would not be permitted to meet her spouse. In none of the cases, the marriage has been registered as per the directions of the Hon'ble Supreme Court in *Seema's case* (supra). The seven instances mentioned hereinabove indicate that by abusing the process of the Court, some couples have approached the Court to obtain orders of protection of life and liberty by either concealing the facts or under some misconception.

16. After pondering minutely over the conflicting interests of the young couples and their unwilling parents, I am of the considered opinion that some guidelines in accordance with the procedures prescribed by law should be laid down so as to prevent the young couples to unnecessarily rush to the High Court solely with an objective to get a stamp of approval to their marriage but at the same time to protect their life and liberty at the hands of the State agencies. As in most of the cases, there is an apprehension of arrest in a criminal cases or complaint registered by the parents/family members of the girls on the allegations of kidnapping or abduction, the offence of abduction and kidnapping being a cognizable offence, the police has got an authority to arrest a person accused of a cognizable offence under Section 41 Cr.P.C. It has been observed that in many cases without recording the statement of the girls, the boy or his family members are arrested. The rebellion young couples can be protected from the said illegal threat by adverting to the law laid down by Hon'ble Supreme Court in the case *Joginder Kumar v. State of U.P.*, 1994 (2) RCR (Criminal) 601 : 1994 (4) SCC 260, where the Hon'ble Supreme Court was pleased to hold that power of arrest under Section 41 Cr.P.C. should not be merely on suspicion about person's complicity in the crime.

17. Protection for arrest by the police can be granted in the light of the ratio of the judgment of *Joginder Kumar's case* (supra) to a husband who apprehends arrest in a case of kidnapping of his wife. If intimation is received by the police of a particular district regarding the marriage of a young couple against the wishes of their family member, a record should be maintained of said information and if a case is registered for kidnapping or abduction of the girl at the instance of her parents or other family members, the arrest can be deferred till the statement of the girl is recorded by the police.

18. In context to the power of the police to arrest, it will be pertinent to refer to few provisions of arrest as per the Punjab Police Rules, 1934, (for short 'the Rules'). Rule 26.1 of the Rules lays down that authority to the police to arrest in a cognizable offence without warrants is permissive and not obligatory. Whenever escape from justice or inconvenient delay is likely to result from the police failing to arrest, they are bound to do so; but in no other cases. Rule 26.2 of the Rules enables the police to defer making the arrest until the investigation is sufficiently complete and where there is no risk of the accused absconding. Rule 26.1 and 26.2 are reproduced hereunder :

*"26.1 General Power of arrest :—*Section 54, Code of Criminal Procedure authorizes any police officer to arrest without a warrant any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned. The authority given under this section to the police to arrest without a warrant is, however, permissible and not obligatory. Whenever escape from justice or inconvenient delay is likely to result from the police failing to arrest, they are bound to do so; but in no other cases. The law allows a police officer to apply to a magistrate for a warrant or a summons instead of making the arrest immediately, and this discretion shall be exercised whenever possible and expedient.

The law also allows a police officer in any bailable case to take security under section 170 Criminal Procedure Code from an accused person to appear before a magistrate without first arresting him.

26.2 Power to defer arrest : If the fact that suspicion rests upon a particular person has been kept secret, and there is no risk of his absconding, the police shall defer making the arrest until the investigation is sufficiently complete; but if any interference with the liberty of the accused person is necessary to prevent him from absconding, and the facts justify arrest, the police shall arrest him and

shall not interfere with his liberty unless they arrest him."

19. It was held in 1997 *Crl.L.J. 1237, State of Rajasthan v. Bheru*, that power of the police to arrest under Section 41 Cr.P.C. is neither absolute nor it is to be exercised in mechanical manner. It must be exercised judiciously. It is not necessary that offender should be arrested as soon as the First Information Report was lodged. It was observed in the said judgment that as per clause (a) of Section 41 (1), a police officer must satisfy himself before making an arrest that the complaint is reasonable one or the information received is credible or that there are reasonable grounds to suspect that such person is concerned with the commission of a cognizable offence. The principle of law laid down in *Joginder Singh's case* (supra) was followed in *Bhera's case* (supra). The Allahabad High Court in *Smt. Amrawati and another v. State of U.P.*, 1996 Crl. Law Journal 1347 held in context to the "arrest" of an accused in cognizable offence that the discretion of the police officer to arrest cannot be arbitrary but must be guided by principles laid down in *Joginder Singh's case* (supra).

20. Taking into consideration the law laid down in *Joginder Singh's case* (supra) and the instructions issued in *Lata Singh's case* (supra) by the Supreme Court, a direction is required to be issued that whenever a case of 'rebellion marriage' or run away marriage by a young couple is brought to the notice of the police and simultaneously a complaint of the family members of any of the young couple is received or an FIR of abduction is registered, it is incumbent upon the investigating officer or the concerned authority to defer the arrest of the person alleged to have committed a cognizable offence till the statement of the girl is recorded. The power of arrest should not be arbitrarily used in such case and the alleged offender should not be arrested in a mechanical manner. This direction does not mean that where it is established that a minor girl has been abducted and enticed and sexually harassed, the police authorities should refrain from arresting the offender as per Section 41 Cr.P.C. The entire facts and circumstances of the case should be brought to the notice of the S.S.P./S.P. and offender should be arrested after obtaining necessary instructions from the police head concerned (S.S.P. or S.P.) of the area.

21. Whenever, any intimation is received by concerned SSP/SP of the area regarding the marriage, the necessary direction will be issued to the concerned Police Station to take the necessary steps after following the directions of the Supreme Court in *Joginder Kumar's case* (supra).

22. It might appear problematic to the police authorities to maintain a record regarding the intimations received of the area regarding the marriages, but reference to the provisions of Chapter 21 dealing with the Preventive and Detective Organization, Chapter 22 the Duties concerning Police Station and Chapter 23 dealing with Prevention of Offences, there is a scope of maintaining a record regarding the information. Rule 21.1 reads as follows :

*"21.1 Principles of the Criminal Law and Police Organization :—*The Criminal Law of India and the Police Organization, which is based upon it, are both founded on the principle that public order depends essentially upon the reasonability of every member of the community within the law to prevent offences and to arrest offenders. The magisterial and police organization is set up to enforce, control and assist this general responsibility. This fundamental principle must be thoroughly understood and borne constantly in mind by police officers of all ranks, but more especially by gazetted officers and upper subordinates.

Instructions as to the general relations between police officers and Magistrates are contained in Chapter I of these Rules and some further detailed instructions are placed in this chapter. *The ideal to be aimed at in respect of relations with the public is that every police officer of whatever rank should be regarded by every law-abiding person as a wise and impartial friend and a protector against injury to his person and property.* In proportion as this ideal is approached, the police will receive the information and assistance which they need, in order to combat crime successfully. When confidence and co-operation are lacking, private persons and village officials resort to connivance at crime and to seeking redress for their own losses through treaty with criminals; the police are isolated in their efforts to prevent and detect offences, and can hope for but a small measure of success.

The proper relations between the police and the public in a district depend primarily upon the personal attitude of the Superintendent, and the example set by him and enforced upon his subordinates. *The most important duties, of a Superintendent are to know the people of his district and to know what his Subordinates are doing.* Such knowledge can only be gained by the fullest personal accessibility, activity in touring, thorough and intelligent supervision and a sympathetic interest in the life of the district and the facts and difficulties of the work of his own men. *He must inspire confidence in his subordinates as well as in the public. While alert to check tyranny dishonestly and other abuses by his subordinates he must be as accessible to them as to non-officials, and ready at all times to help them in their difficulties and support them against the evil influences which they have to face.* This should be the attitude of all supervising officers. They should ensure direct access to themselves unimpeded by their subordinates, and must be ready to give a patient hearing to all complaints and grievances, but must avoid creating any impression of spying which would destroy the confidence and undermine the authority of their officers." (emphasis supplied by underlining)"

23. An officer incharge of the police station under Chapter 22 of the Punjab Police Rules is required to maintain correctly all the Registers and records etc. and to comply with the directions and instructions.

Relevant Rule 22.1 of the Rules reads as under :

"22.1 Officer in charge of police station. - (1) The officer in charge of a police station is ordinarily a sub-inspector. Within the limits of the police station jurisdiction the sub-inspector is primarily responsible for the effective working, management, good conduct and discipline of the local police, for the preservation of peace and the prevention and detection of crime. The due performance of all police duties, the exercise by the police of the powers granted them by law, the correctness of all registers, records and reports prepared by them, and the direction, instruction and efficiency of all police subordinates in the station jurisdiction are matters for which the officer in charge of a police station is essentially answerable."

A reading of Rules 21.1, 21.6 and 22.1 reflects that it is the duty of the police to keep a record of the information received from the public of the concerned district. There does not appear to be, thus any difficulty for the police to keep a record of the intimation sent by a couple regarding their marriage against the wishes of their parents or that they apprehend threat to their life and liberty at the hands of their family members.

Taking into consideration the scope of life and liberty and the other relevant provisions of the Punjab Police Rules, provisions of Criminal Procedure Code and considering the fact that the essence of law is to serve and secure social solidarity so as to attain maximum good of the society and to protect the individual, public and social interests a balanced approach is required to be adopted in the interest of life and liberty which is required to be protected, directions are required to be issued while disposing of the bunch of petitions filed by the young couples. Thus, adopting the ratio of the judgments of the *Joginder Kumar's case* (supra) and *Lata Singh's case* (supra) and also taking into consideration the scope of Article 21 of the Constitution of India and Punjab Police Rules, the CrI. petitions are disposed of with the following directions :

- i) Whenever any intimation is received by the SSP/SP of concerned District regarding the marriage of a young couple with a threat and an apprehension of infringement of the right of life and liberty by the police at the instance of the family members of one of the spouses, the SSP/SP concerned will consider the representation and will himself/herself look into the matter and issue necessary directions to maintain a record of the said intimation under Chapter 21 of the Punjab Police Rules.
- ii) On receipt of abovesaid intimation of marriage by any police officer, necessary directions will be issued to the concerned Police Station to take necessary steps in accordance with law to enquire into the matter by contacting the parents of both boy and girl. The matter regarding age, consent of the girl and grievance of her family will be determined. In the eventuality of any complaint of kidnapping or abduction having been received from any of the family members of the girl generally the boy (husband) will not be arrested unless and until the prejudicial statement is given by the girl (wife). Arrest should generally be deferred or avoided on the immediate receipt of a complaint by the parents or family members of the girl taking into consideration the law laid down by Hon'ble Supreme Court in *Joginder Kumar's case* (supra);
- iii) If the girl is major (above 18 years), she should not forcibly be taken away by police to be handed over to her parents against her consent. Criminal force against the boy should also be avoided.
- iv) So far as the threat to the young couple of the criminal force and assault at the hands of the private persons is concerned, it would always be open to the police to initiate action if any substantive offence is found to have been committed against the couple;
- v) In case of any threat to the breach of peace at the hands of the family members of the couple it will always be open to the State authorities to take up the security proceedings in accordance with law;
- vi) It will not be open to the "run away couple" to take law in their hands pursuant to the indulgence shown by the police on the basis of their representation sent to the SSP/SP of the concerned District;
- vii) If despite the intimation having been sent to the SSP/SP there is an apprehension or threat of violation of right of personal life and liberty or free movement, the remedy of approaching the High Court should be the last resort;
- viii) In case there is an authority constituted for issuance of marriage certificate as per the law laid down by Supreme Court in *Seema's case* (supra) in the concerned districts, the couple of so called 'run away marriage' should get the marriage registered in compliance with the directions of the Supreme Court and a copy of the same should also be forwarded to the police alongwith the representations or any time subsequent thereto.
- ix) Nothing said hereinabove will prevent the immediate arrest of a person who fraudulently entices a girl with false promises and exploits her sexually as per the statement of the girl.

With the abovesaid general directions all the petitions except CrI.W.P. No. 941 of 2007, CrI. Misc. No. 50777-M of 2007, and CrI. Misc. No. 49310-M of 2007 are disposed of.

CrI. W.P. No. 941 of 2007, CrI. Misc. No. 50777-M of 2007, and CrI. Misc. No. 49310-M of 2007 are dismissed as there has been misuse of the

process of law.

Order accordingly.