A HARDEV SINGH

v.

HARPREET KAUR & ORS.

(Criminal Appeal No. 1331 of 2013)

B NOVEMBER 07, 2019

[MOHAN M. SHANTANAGOUDAR AND

ANIRUDDHA BOSE, JJ.]

Prohibition of Child Marriage Act, 2006 – s.9 – Interpretation C *of – High Court directed registration of FIR for criminal offence u/ s. 9 of the Act, 2006 against the appellant – It was alleged that appellant was only 17 years, when he married respondent no.1 – However, it is not disputed that respondent no.1 (wife of the appellant) was a major at the time of marriage – Held: A literal interpretation of ss.2(a), 2(b) and 9 would mean that if a male aged* D *between the years of eighteen and twenty-one contracts marriage with a female above eighteen years of age, female adult would not be punished, but it is the male who would be punished for contracting a child marriage, though he himself is a child – However, such interpretation goes against the object of the Act – The intention* E *was to punish the male adults contracting child marriages to protect minor young girls – This is also supported by the marginal note of the s.9, which reads "Punishment for male adult marrying a child" – Thus, the words "male adult above eighteen years of age, contracts a child marriage" in s.9 should be read as "male adult above* F *eighteen years of age marries a child" – In the instant case, the High Court committed error on the face of record as appellant was 17 years old i.e. below eighteen years when he married respondent no.1 – Hence, s.9 was not applicable to the appellant – Accordingly, the direction of the High Court to register FIR quashed and the impugned order set aside – Interpretation of statutes.*

G *Interpretation of statutes – Marginal note of section – Held: It is well settled that where any ambiguity exists with regard to the interpretation of a legislative provision, the marginal note can be used in aid of construction, having regard to the object of the legislation and the mischief it seeks to remedy.*

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Allowing the appeal, the Court

HELD : 1. Section 2(a) of the Prohibition of Child Marriage Act, 2006 defines child as a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age. Under Section 2(b) of the Act, "child marriage" means a marriage to which either of the contracting parties is a child. Thus, even if the husband is between eighteen and twenty-one years of age, it can be treated as a child marriage. [Para 3.1] [124-C]

2. It is not in dispute that Respondent No.1 (wife of the Appellant) was a major at the time of marriage. The 2006 Act does not make any provision for punishing a female adult who marries a male child. Hence, a literal interpretation of the above provisions of the 2006 Act would mean that if a male aged between the years of eighteen and twenty-one contracts marriage with a female above eighteen years of age, the female adult would not be punished, but it is the *male* who would be punished for contracting a child marriage, though he himself is a child. [Para 3.2] [124-D-E]

3. Section 9 of the 2006 Act must be viewed in the backdrop of the gender dimension to the practice of child marriage. Thus, it can be inferred that the intention behind punishing only male adults contracting child marriages is to protect minor young girls from the negative consequences thereof by creating a deterrent effect for prospective grooms who, by virtue of being above eighteen years of age are deemed to have the capacity to opt out of such marriages. However, it cannot be gleaned that the legislators sought to punish a male between the age of eighteen and twenty-one years who contracts into a marriage with a female adult. Instead, the 2006 Act affords such a male, who is a child for the purposes of the Act, the *remedy* of getting the marriage annulled by proceeding under Section 3 of the 2006 Act. Hence, male adults between the age of eighteen and twenty-one years of age, who marry female adults cannot be brought under the ambit of Section 9, as this is not the mischief that the provision seeks to remedy. [Para 3.8] [126-E-G]

A **4. This view is supported by the marginal note of Section 9, which reads "Punishment for male adult marrying a child". It is well settled that where any ambiguity exists with regard to the interpretation of a legislative provision, the marginal note can be used in aid of construction, having regard to the object of the legislation and the mischief it seeks to remedy. In view of the above, the words "male adult above eighteen years of age, contracts a child marriage" in Section 9 of the 2006 Act should be read as "male adult above eighteen years of age marries a child". [Para 3.9] [126-H; 127-A]**

C *The 205th Report of the Law Commission of India on the Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws* **at pages 15-23 – referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1331 of 2013.

D From the Judgment and Order dated 26.11.2010 of the High Court of Punjab & Haryana at Chandigarh in Crl. Misc. No. 23881 of 2010 in Crl. Misc. No. 11850-M of 2010 (O&M).

Rishi Malhotra, Utkarsh Singh, Advs. for the Appellant.

E Bankey Bihari Sharma, Ram Nath, Ms. Ranjeeta Rohatgi, Satish Kumar, Advs. for the Respondents.

The Judgment of the Court was delivered by

MOHAN M. SHANTANAGOUDAR, J.

F 1. By the impugned order passed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the High Court has recalled its earlier order dated 26.04.2010 giving protection to the Appellant and his wife (Respondent No. 1).

The records reveal that the Appellant and Respondent No. 1 G married each other on 17.4.2010 without the consent of their parents. It seems that the parents of Respondent No. 1 were creating problems for the couple and consequently, the latter made an application (Criminal Misc No. 11850-M/2010) before the High Court of Punjab and Haryana at Chandigarh to grant police protection. By the aforesaid order dated 26.04.2010, police protection was granted. Subsequently, the couple filed

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a contempt petition, which was disposed of by the High Court vide order dated 18.5.2010, based on an assurance given by the police that no harm would visit the petitioners at the behest of Respondent No. 1's family members.

However, subsequently, upon application made by the father of Respondent No. 1, the High Court vide the impugned order dated 26.11.2010 recalled the protection order dated 26.04.2010, and directed registration of an FIR for criminal offence under Section 9 of the Prohibition of Child Marriage Act, 2006 ('2006 Act') against the Appellant. This was on the ground that the Appellant had stated in the aforesaid application Criminal Misc No. 11850-M/2010 seeking police protection that he was 23 years of age at the time of marriage, whereas he was only 17 years of age, as is apparent from the school record, where his date of birth is recorded as 30.6.1992.

We note from the order sheets maintained by this Court that the impugned order was stayed by this Court vide interim order dated 14.12.2010 and the said interim order has continued till present.

2. Having gone through the material on record and having heard learned counsel for the parties, we are of the considered opinion that:

(a) The High Court could not have recalled its earlier order under Section 482, Cr.P.C, inasmuch as there is no provision for recalling or reviewing an order passed by it in criminal matters.

(b) The order that was set aside was only a protection order and there was no exceptional circumstance calling for an exercise of the High Court's inherent powers.

(c) The High Court was not justified in directing initiation of criminal proceedings against the Appellant under Section 9 of the 2006 Act. Section 9 reads as under:

> "**Section 9. Punishment for male adult marrying a child.-** Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both." (emphasis supplied)

The High Court has relied upon the school record of the Appellant in directing prosecution against him under Section 9. We find that the High Court has committed a grave error on the face of the record

A inasmuch as if the date of birth as given in the school certificate is accepted, the Appellant was 17 years old, i.e. below eighteen years of age when he married Respondent No. 1. Hence, Section 9 cannot be applied to him.

3. In any case, even assuming that the Appellant was aged eighteen
B years or above on the date of his marriage, we are of the considered opinion that Section 9 does not apply to the facts and circumstances of this case. It is pertinent to refer to the overall scheme of the 2006 Act in determining whether an offence under Section 9 is made out.

3.1. Section 2(a) of the 2006 Act defines child as a person who, if
C a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age. Under Section 2(b) of the Act, "child marriage" means a marriage to which either of the contracting parties is a child. Thus, even if the husband is between eighteen and twenty-one years of age, it can be treated as a child marriage.

D 3.2. It is not in dispute that Respondent No.1 (wife of the Appellant) was a major at the time of marriage. The 2006 Act does not make any provision for punishing a female adult who marries a male child. Hence, a literal interpretation of the above provisions of the 2006 Act would mean that if a male aged between the years of eighteen and twenty-one contracts marriage with a female above eighteen years of
E age, the female adult would not be punished, but it is the *male* who would be punished for contracting a child marriage, though he himself is a child.

3.3. We are of the view that such an interpretation goes against the object of the Act as borne out in its legislative history. Undoubtedly,
F the Act is meant to eradicate the deplorable practice of child marriage which continues to be prevalent in many parts of our society. The Statement of Objects and Reasons declares that prohibition of child marriage is a major step towards enhancing the health of both male and female children, as well as enhancing the status of women in particular.
G Notably, therefore, a significant motivation behind the introduction of this legislation was to curb the disproportionate adverse impact of this practice on child *brides* in particular.

3.4. After being passed by the Rajya Sabha, when the Prohibition of Child Marriage Bill, 2006 was introduced for discussion in the 14th
H Lok Sabha by Smt. Renuka Chowdhury, the then Minister of State for

Women and Child Development, she emphatically highlighted how child marriage reinforces gender discrimination in the country:

> "…Unfortunately, here in India today gender is a matter of life and death. Boys live and girls die and that is the tragedy of our times.
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> These girls are then denied access to schools, they are made to look after their younger siblings, they have no access to food security, much less to immunization, they are anemic, they are subjected to untold exposures of infections and horrors and as soon as they enter their reproductive years, irrespective of the fact that they live in a tropical country like ours where onset of reproductive years is much earlier than in some other countries, these children are then sent off to be married and they become mothers at that age, at that stage of malnutrition, at that stage of denial of food security and at that stage of incubating disease whereby they, in turn, give birth to malnutrition children.
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> …After that these children are then vulnerable to domestic violence, alcoholic husbands who come home and beat them, abuse of different kinds, trafficking, taken away and exposed to horrors of such type that we cannot even begin to imagine. Although, the Child Marriage Restraint Act 1929 was brought into force nearly 77 years ago, it only brought restraint. It did not talk of prevention or removal."

3.5. Further, the Law Commission of India has also noted that child marriage is far more prevalent amongst girls, whose husbands are often much older than them, therefore compromising their development. (**See** *The 205th Report of the Law Commission of India on the Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws* at pages 15-23)

3.6. It is also pertinent in this regard to refer to the Prevention of Child Marriage Bill, 2004 ('2004 Bill') which preceded the 2006 Act. Clauses 2(a), 2(b), and 9 of the 2004 Bill are *in pari materia* with the corresponding Sections of the 2006 Act, except insofar as Clause 9 of the 2004 Bill prescribed simple imprisonment, whereas Section 9 of the 2006 Act prescribes rigorous imprisonment for the offence. The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, in its Thirteenth Report, on the 2004 Bill, notes that although

A both men and women are deemed to have attained majority at eighteen years of age under other laws, a differential metric has been adopted for the purposes of defining child marriage. A higher age is prescribed for men, based on the prevailing societal notions that the age of eighteen years is insufficient for a boy to attain the desired level of education and economic independence, and that an age gap ought to be maintained between the groom and the bride.

3.7. However, the 2004 Bill, as also the 2006 Act, treats men who are above the age of 18 as having sufficient maturity to be held responsible for marrying a female child. The Report also notes that the purpose of Clause 9 of the 2004 Bill is to provide adequate penal consequences for a male adult who marries a *child*. However, an adult woman is exempt from punishment for marrying a male child as, in a society like ours, decisions regarding marriage are usually taken by the family members of the bride and groom, and women generally have little say in the matter. We hasten to emphasise that we do not wish to comment on the desirability of maintaining the aforesaid distinction in culpability. However, the context in which this distinction was considered appropriate by the legislature must be taken into account.

3.8. Section 9 of the 2006 Act must be viewed in the backdrop of this gender dimension to the practice of child marriage. Thus, it can be inferred that the intention behind punishing only male adults contracting child marriages is to protect minor young girls from the negative consequences thereof by creating a deterrent effect for prospective grooms who, by virtue of being above eighteen years of age are deemed to have the capacity to opt out of such marriages. Nowhere from the discussion above can it be gleaned that the legislators sought to punish a male between the age of eighteen and twenty-one years who contracts into a marriage with a female adult. Instead, the 2006 Act affords such a male, who is a child for the purposes of the Act, the *remedy* of getting the marriage annulled by proceeding under Section 3 of the 2006 Act. Hence, male adults between the age of eighteen and twenty-one years of age, who marry female adults cannot be brought under the ambit of Section 9, as this is not the mischief that the provision seeks to remedy.

3.9. Our views are supported by the marginal note of Section 9, which reads "Punishment for male adult marrying a child". It is well settled that where any ambiguity exists with regard to the interpretation of a legislative provision, the marginal note can be used in aid of

construction, having regard to the object of the legislation and the mischief it seeks to remedy. A

In view of the above, the words "male adult above eighteen years of age, contracts a child marriage" in Section 9 of the 2006 Act should be read as "male adult above eighteen years of age marries a child".

4. Having regard to the above discussion, Section 9 of the 2006 Act does not apply to the present case at all. By way of abundant caution, we wish to clarify that we are not commenting on the validity of marriages entered into by a man aged between eighteen and twenty-one years and an adult woman. In such cases, the man may have the option to get his marriage annulled under Section 3 of the 2006 Act, subject to the conditions prescribed therein. B C

5. Be that as it may, it is brought to our notice by the advocates for the parties herein, that the couple has been living happily, and are not facing any threat from their family members. Hence, we are of the opinion that police protection is no more required in the present case. D

6. In view of the above, the directions issued by the High Court to get the First Information Report lodged (FIR No. 122 dated 24.12.2010) are quashed, and the impugned order is set aside. The appeal is allowed accordingly.

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Ankit Gyan Appeal allowed.