

112 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-5531-2021

Date of decision : 22.06.2021

Sanjay and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr. Ram Kumar Saini, Advocate
for the petitioners.

Ms. Safia Gupta, AAG, Haryana.

RAJESH BHARDWAJ, J. (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

This petition has been filed by petitioner No.1 namely, Sanjay son of Devender, aged about 18 years and petitioner No.2 namely, Bariya Ranjnaben Rasiyabhai @ Aanjnaben daughter of Rasiyabhai, aged about 19 years praying for issuance of writ in the nature of mandamus directing respondents No.2 and 3 to protect their life and liberty at the hands of respondents No.4 to 6.

It has been contended that both the petitioners met with each other on Facebook and as they know each other since long time, they fell in love and decided to marry. However, petitioner No.1 is 18 years of age whereas petitioner No.2 is 19 years of age. Though both of them are major but they are not of marriageable age. They have contended that they are

living in live-in-relationship and would marry as and when they would attain marriageable age. It has been alleged that the parents of petitioner No.2 wanted to marry her with some another boy which was not acceptable to petitioner No.2. She tried to persuade her family members but they did not budge. Having no other alternative, the petitioners decided to reside with each other in live-in-relationship. Their relationship is not acceptable to their family members and hence, they are being issued threat time and again. Apprehending danger, they moved a representation to the Superintendent of Police, Mahendergarh but no action has been taken on the same. Having no other alternative, they approached this Court by filing the present petition.

It is evident that both the petitioners are above the age of 18 years, however, the boy is not of marriageable age. The live-in-relationship nowadays is not a new phenomena but the society has not evolved to the extent of accepting such relationship without raising the eyebrows to such relationship. The Hon'ble Supreme Court has dealt with this issue in a case titled as Nandakumar and another Vs. The State of Kerala and others bearing Criminal Appeal No.597 of 2018 decided on 20.04.2018. It has been observed by the Hon'ble Supreme Court which is reproduced as under:-

“We need not go into this aspect in detail. For our purposes, it is sufficient to note that both appellant No. 1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that ‘live-in relationship’ is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from [Domestic Violence Act, 2005](#).

The Court also emphasised due importance to the right of choice of an adult person which the Constitution accords to an adult person as under:

“54. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realization of a right is more important than the conferment of the right. Such actualization indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition.

55. Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a Constitutional Court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanction, the centripodal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept.”

Thus, time and again Hon'ble Apex Court as well as various other High Courts have accepted the live-in-relationship and have come to the rescue of the couple as enshrined under Article 21 of the Constitution of India. Though issue raised by the petitioners in the petition is qua their live-

in-relationship and their fundamental right to their life and liberty as enshrined in Article 21 of the Constitution of India but the Court is concerned only with their right under Article 21 of the Constitution. Hence, there is no reason not to address the grievances raised by the petitioners qua the same. As a result, Superintendent of Police, Mahendergarh is directed to take into consideration the contentions raised by the petitioners in the representation (Annexure P-6) and assess the threat perception if any to the petitioners. In case the allegations are found substantiated then the requisite action be taken as in accordance with the law.

It is being clarified that observations given hereinabove shall not be understood having provided any immunity to the petitioners from any legal action, if they are found to have committed any violation under the law.

Petition is disposed of.

(RAJESH BHARDWAJ)
JUDGE

22.06.2021
m.sharma

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No