

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

127

CRWP-3815-2022(O&M)
Date of decision: 26.04.2022

SUNITA AND ANOTHER

....Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Rajesh Duhan, Advocate
for the petitioners.

Mr. Ashish Yadav, Additional AG Haryana.

Mr. R.K. Agnihotri, Advocate
for the respondent Nos.4 to 6.

VINOD S. BHARDWAJ. J. (ORAL)

The petitioners namely Sunita and Pradeep have approached this Court under Article 226 of the Constitution of India for seeking protection of their life and personal liberty from private respondents Nos 4 to 6.

2. The contention of the petitioners is that they are major, aged 18 years and 27 years respectively. In support thereof, copy of the Aadhaar Cards pertaining to the petitioners have been appended. The petitioners further contend that they have performed marriage against the wishes of their parents. The marriage of the petitioners was solemnized on 21.04.2022 at Sri Bhramari Devi Jan Kalayan Institute (Regd. No.00616) 222, Mansa Devi Market, Sector 4 Panchkula according to Hindu rites and ceremonies. A copy of marriage

certificate (Annexure P-4) has also been appended. The petitioners apprehend threat to their lives and claim that there is a constant danger of being implicated in a false case.

3. Notice of motion.

4. Pursuant to supply of advance copy, Mr. Ashish Yadav, Additional AG Haryana has appeared and accepted notice on behalf of respondent-State.

5. Mr. R.K. Agnihori, Advocate appears on behalf of respondent Nos.4 to 6 and files his power of attorney. Learned counsel for respondent Nos.4 to 6 contends that the petitioners have concealed vital information from the Court and that it has been stated by the petitioners that this is their first marriage, whereas the petitioner No.1 was married earlier on 25.02.2022. He thus submitted that a wrong averment has been made by the petitioners in the present petition. Reference is made to the paragraph No.16 of the writ petition, wherein such averment has been made. He has further placed reliance upon the judgment of the Hon'ble Allahabad High Court in the matter of *Asha Devi & Another Vs. State of U.P. And Others* decided on 01.12.2020 in Writ C. No.18743 of 2020. The relevant extract of the said judgment is reproduced as under:-

16. According to own case of the petitioners, the petitioner no.1 is still a legally wedded wife of one Mahesh Chandra. As per own alleged application dated 17.09.2020 (as reproduced in para 6 above), the petitioners are living as husband and wife and they have sought protection from interference in their living together as husband and wife. Once the petitioner No.1 is a married woman being wife of one Mahesh Chandra, the act of petitioners particularly the petitioner No.2, may constitute an offence under Sections 494/495 I.P.C. Such a relationship does not fall within the phrase "live-in-relationship" or "relationship in the nature of marriage". The writ petition has been filed by the petitioners for protection from interference by

others in their living as husband and wife. If the protection as prayed is granted, it may amount to grant protection against commission of offences under Sections 494/495 I.P.C.

6. I have considered the submissions advanced by the counsel appearing on behalf of the parties and perused the judgment relied upon by the learned counsel for the respondent Nos.4 to 6.

7. The Hon'ble Supreme Court has time and time again observed that it is not the Court's domain to intervene in the matters of choice or suitability of a marriage/relationship of an individual. In this respect, the concurring judgment authored by Hon'ble Dr. Justice D.Y. Chandrachud, in ***Shafin Jahan Vs. Asokan K.M. (Criminal Appeal No.366 of 2018 decided by Hon'ble Supreme Court on 09.04.2018)***, is noteworthy to mention, and thus, the relevant extract thereof reads as under:

“23.The High Court has lost sight of the fact that she is a major, capable of taking her own decisions and is entitled to the right recognised by the Constitution to lead her life exactly as she pleases. The concern of this Court in intervening in this matter is as much about the miscarriage of justice that has resulted in the High Court as much as about the paternalism which underlies the approach to constitutional interpretation reflected in the judgment in appeal. The superior courts, when they exercise their jurisdiction parens patriae do so in the case of persons who are incapable of asserting a free will such as minors or persons of unsound mind. The exercise of that jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie. That decision rests exclusively with the individuals themselves. Neither the state nor society can intrude into that domain. The strength of our Constitution lies in its acceptance of the plurality and diversity of our culture. Intimacies of marriage, including the choices which individuals make on whether or not to marry and on

whom to marry, lie outside the control of the state. Courts as upholders of constitutional freedoms must safeguard these freedoms. The cohesion and stability of our society depend on our syncretic culture. The Constitution protects it. Courts are duty bound not to swerve from the path of upholding our pluralism and diversity as a nation.

24. Interference by the State in such matters has a seriously chilling effect on the exercise of freedoms. Others are dissuaded to exercise their liberties for fear of the reprisals which may result upon the free exercise of choice. The chilling effect on others has a pernicious tendency to prevent them from asserting their liberty. Public spectacles involving a harsh exercise of State power prevent the exercise of freedom, by others in the same milieu. Nothing can be as destructive of freedom and liberty. Fear silences freedom”.

8. The relief of protection of life and liberty guaranteed under Article 21 of the Constitution of India cannot be denied to a citizen merely because he happens to commit an offence punishable under the Indian Penal Code. Every citizen of the country is entitled to protection of his life and liberty under the Constitution of India even though he may be a hardened criminal or may have committed any other offence. Such protection of law cannot be denied to a person except where the rights of the person or his liberties are to be denied to him by operation of law or in a procedure known to law.

9. The Hon'ble Apex Court has even gone to the extent of casting a duty upon the courts to protect the rights of prisoners and convicts. The rule of law has to be held at the highest pedestal. The Constitutional right of protection cannot be abridged, except in a manner permitted by law. Further, the Courts do not substitute matrimonial or relationship choice of an individual who is major. The conflict or a personal conviction of a Court should not overshadow the statutory

and constitutional rights of an individual and rise beyond the constitutional morality that the Courts are bound to protect.

10. On the question of the extent of protection to the petitioners, it would be prudent to consider the opinion of the Hon'ble Apex Court in *Sunil Batra v. Delhi Administration & Others, reported in (1978) 4 SCC 409*. The Hon'ble Supreme Court succinctly laid down that it is the duty of the Supreme court and all other subordinate courts to protect the rights of our country's citizens and that in no way are even the prisoners and convicts exempt from this. In the matter of *Mohammed Ajmal Amir Kasab & Ors. Vs. State of Maharashtra & Ors., reported in (2012) 9 SCC 1*, the Hon'ble Apex Court exemplifies the significance of Rule of Law in our country wherein a dreaded terrorist, even after being caught red-handed, was still not deprived of his life and right to a free and fair trial until after sentencing. The State went above and beyond to protect the terrorist Kasab because India is a country where rule of law is supreme and no liberty can be taken away except without due process of law. Moral policing cannot be allowed to dictate the actions of the state nor can moral policing by the public at large be allowed or forgiven.

11. The Apex Court has laid down in no uncertain terms that the emphasis to be given to public morality is miniscule, when they are in conflict with constitutional morality, and that the Courts must uphold constitutional morality and rely on the same rather than obscure notions of societal morality, which have no legal tenability. In addition to the Courts' responsibility to uphold the principles of constitutional morality, there exists a parallel duty to not infringe upon the personal relationship between two free willed adults.

12. This Court finds itself firmly tied down to the principle of individual autonomy, which cannot be hampered by societal expectations in a vibrant

democracy. The State's respect for the individual independent choices has to be held high. The public morality cannot be allowed to overshadow the constitutional morality, particularly when the legal tenability of the right to protection is paramount.

13. It is sufficiently clear to this Court that the Hon'ble Apex Court's standpoint is that there exists a duty of the State to protect and safeguard all fundamental rights, unless taken away by due process of law. Even if any illegality or wrongfulness has been committed, the duty to punish vests solely with the State, that too in attune with due process of law. In no circumstance can the State bypass due process, permit or condone any acts of moral policing or mob mentality. When the Right to life and liberty is even guaranteed to convicted criminals of serious offences, there can be no reasonable nexus to not grant the same protection to those in an "legal/illegal relationships".

14. The ratio of the judgment laid down by the Hon'ble Allahabad High Court being not binding on this Court fails to convince this Court and it also does not take into consideration the ratio laid down by the Hon'ble Supreme Court. A similar order was also passed by the Division Bench of the Hon'ble Allahabad High Court in another matter of **Smt. Aneeta and Another Vs. State of U.P. And three others**, Writ-C No.-14443 of 2021, dated 29.07.2021 and laying a similar proposition. The applicability and binding value of the same was condoned by this Court in CRWP-7874 of 2021 titled as **Paramjit Kaur and Another Vs. State of Punjab and Ors** CRWP No.7874 of 2021, dated 03.09.2021 and it was observed as under:-

“On 19.08.2021 the petitioners had been directed (by a co-ordinate Bench) to address arguments in terms of a judgment of the Allahabad High Court in Smt. Aneeta and another v. State of U.P. And three others (LawFinder Doc Id # 1864359).

Learned counsel for the petitioners today submits that in the said judgment it has been observed that without obtaining a divorce, a spouse is not entitled to protection qua a relationship with another person.

With due respect, I find myself unable to agree with that, especially in view of the fact that the Supreme Court in Joseph Shine v. Union of India (Writ Petition (Criminal) no.194 of 2017, decided on 27.09.2018), has struck down Section 497 of the IPC as being unconstitutional and violative of Articles 14, 15 and 21 of the Constitution of India, (the said provision being one providing punishment for adultery).”

Even otherwise, the Hon'ble Allahabad High Court in its above Division Bench judgment has not considered the law laid down by the Hon'ble Supreme Court expounding Article 21 of the Constitution of India. Hence, the judgment is *res-integra* insofar as the question of Article 21 is concerned. It thus cannot be held to lay down any ratio insofar as a right to protection of life and liberty granted by the Constitution of India under Article 21 is concerned.

15. Learned counsel for the petitioners states that a representation dated 21.04.2022 (Annexure P-6) has also been submitted by the petitioners to the respondent No.2- Superintendent of Police, Panipat.

16. Learned State counsel has no objection if appropriate direction for providing requisite protection to the petitioners is given.

17. Without examining the question of legality and validity of the marriage and expressing any opinion thereon, the petition is disposed of with the directions to respondent No.2-Superintendent of Police, Panipat to look into the grievances of the petitioners as set out in the petition and also expressed in the representation dated 21.04.2022 (Annexure P-6) and take appropriate action for protection of their lives and liberty as may be warranted by the circumstances.

18. However, it is clarified that in case any criminal case has been/is registered against the petitioners nothing in this order shall be construed as a bar for taking appropriate action by the police authorities in respect thereof in accordance with law.

19. The Registry is directed to send a copy of this order along with copy of the petition and above-said representation to respondent No.2- Superintendent of Police, Panipat for requisite compliance.

The petition is disposed of.

(VINOD S. BHARDWAJ)
JUDGE

April 26, 2022
S.Sharma(syr)

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*

सत्यमेव जयते