

Court No. - 44

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Case :- CRIMINAL MISC. WRIT PETITION No. - 7273 of 2021

Petitioner :- Smt. Fija @ Guddan Shilpakar And Another

Respondent :- State Of U P And 3 Others

Counsel for Petitioner :- Firdos Ahmad, Atul Kumar Yadav

Counsel for Respondent :- G.A., Dushyant Kumar, Mukesh Kumar

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Mrs. Sadhna Rani (Thakur), J.

Heard Sri Firdos Ahmad, learned counsel for the petitioners and Sri Mukesh Kumar, learned counsel for the respondent /complainant.

By means of the present petition, the petitioners herein are seeking for quashing of the first information report dated 19.07.2021 registered as Case Crime No.108 of 2021, under Section 366 IPC, P.S.- Tarwa, District- Azamgarh.

Placing the High School mark-sheet of the victim girl issued in the year 2017, it is submitted by the learned counsel for the petitioners that the petitioner no.1 is a major girl aged about 21 years on the date of incident.

The present petition has been filed with the declaration, jointly by both the petitioners no.1 & 2 that the petitioner no.1 had left her paternal home out of her own sweet will and being a major girl, she is free to take her choice to embrace Islam and perform marriage with the petitioner no.2. As respondent no.4 was against the marriage of the petitioners, they filed a Writ Petition (C) No.13562 of 2021 seeking protection. The said writ petition is still pending before this Court.

The present petition, however, has been filed on the assertion that no offence under Section 366 IPC is made out as the petitioner no.1 is a major girl. The entire criminal case lodged by the respondent no.4 is nothing but an abuse of the process of the law.

Learned counsel for the respondent/complainant, however, says that the alleged marriage solemnised by the petitioners is illegal, inasmuch as, the conversion of the petitioner no.1 to Islam cannot be approved of being in violation of the provisions of the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020. The conversion for contracting the

marriage is prohibited and as such the marriage has no sanctity in law. The court, therefore, may not invoke its jurisdiction in favour of the petitioners whose marriage cannot have sanctity in the eye of the law.

As regards the age of the victim girl, as indicated in the High School mark-sheet appended with the writ petition, no dispute has been raised by the counsel for the complainant. It is, thus, clear that both the petitioners are major. The fact that the present writ petition has been filed with the declaration by the victim girl and that she is living voluntarily in the company of the petitioner no.2, is supported with the signature of the victim girl on the Vakalatnama. Once the age of the victim girl is not in dispute, the petitioners no.1 & 2 cannot be made accused for committing offence under Section 366 IPC as victim had left her home in order to live with the petitioner no.2.

We make it clear that the question in the present petition is not about the validity of marriage of two individuals i.e. petitioners no.1 & 2. Rather, the issue is about the life and liberty of two individuals in choosing a partner or their right to freedom of choice as to with whom they would like to live.

The Division Bench of this Court in the case of ***Salamat Ansari & others vs. State of UP & others*** reported in ***2020 SCC Online All 1382*** while dealing with the similar question has observed that the right to chose a partner irrespective of caste, creed or religion, is inhered under right to life and personal liberty, an integral part of the fundamental right under Article 21 of the Constitution of India. It was further observed that an individual on attaining majority, is statutorily conferred with the right to choose a partner, which if denied would not only affect his/her human right, but also his/her right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

The observations of the Division Bench in paragraph '8' of the said decision are pertinent to be quoted hereunder:

"8. We do not see Priyanka Kharwar and Salamat as Hindu and Muslim, rather as two grown up individuals who out of their own free will and choice are living together peacefully and happily over a year. The Courts and the Constitutional Courts in particular are enjoined to uphold the life and liberty of an individual guaranteed under Article 21 of the Constitution of India. Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty. Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals. We fail to understand that if the law permits two persons even of the same sex to live together peacefully then neither any individual nor a family nor even State can have objection to relationship of two major

individuals who out of their own free will are living together. Decision of an individual who is of the age of majority, to live with an individual of his/her choice is strictly a right of an individual and when this right is infringed it would constitute breach of his/her fundamental right to life and personal liberty as it includes right to freedom of choice, to choose a partner and right to live with dignity as enshrined in Article 21 of the Constitution of India.”

In view of the above discussion, we are of the considered view that from the first information report no offence under Section 366 IPC is made out, inasmuch as, both the petitioners are major and the petitioner no.1 has come up with the categorical stand that she had left her home with the petitioner no.2 willingly and is living with him as a married woman.

In view of the above, the writ petition succeeds and is **allowed**. The first information report dated 19.07.2021 registered as Case Crime No.108 of 2021, under Section 366 IPC, P.S.- Tarwa, District- Azamgarh as well as all consequential proceedings are hereby quashed.

We, however, clarify that while deciding the present petition, we have not looked into the validity of marriage of the petitioners or conversion of petitioner no.1.

Order Date :- 3.9.2021

P Kesari