

**Court No. - 10****A.F.R.****Case :- CRIMINAL MISC. WRIT PETITION No. - 3310 of 2023****Petitioner :- Kiran Rawat And Another****Respondent :- State Of U.P. Thru. Secy. Home, Lko. And Others****Counsel for Petitioner :- Jalaj Kumar Gupta****Counsel for Respondent :- G.A.****Hon'ble Mrs. Sangeeta Chandra,J.****Hon'ble Narendra Kumar Johari,J.**

1. Heard Shri Jalaj Kumar Gupta, learned counsel for the petitioners, Shri Arun Kumar Pandey, learned A.G.A. for the State/respondents Nos.1 to 3 and perused the record.

2. The writ petitioners have come before this Court praying for a writ in the nature of mandamus to be issued to the respondents not to disturb the peaceful living of the petitioners.

3. The petition has only fourteen paragraphs.

4. The relevant facts are stated in paragraphs 4 to 10, which are being quoted herein below:—

"4. That it is submitted that the petitioners due to their love and affection towards each other decided to live in live-in-relationship.

5. That it is relevant to point out here that the petitioner No.1 is aged about 29 years and the petitioner No.2 is aged about 30 years being major in age, living with each other due to their prolonged love and affection. A copy of Birth certificate issued by Nagar Nigam, Lucknow, showing the age of the petitioners are being annexed herewith as Annexure No.1.

6. That it is submitted that as per information of the petitioners no F.I.R. has been lodged against them.

7. That the local Police is harassing the petitioner No. 2 and his family members as the petitioner No.1 is living with the petitioner No.2 in live-in-relation.

8. That it is submitted that the petitioners are presently living at a rental house in Trivedi Nagar area which comes under the territorial jurisdiction of Police Station- Hasanganj, Lucknow.

9. *That it is submitted that no one can make any hindrance in the personal life and liberty of the petitioners but the police on behest of opp. party no. 4 harassing the petitioners as they both belong to different religion but being major living together in live-in-relationship.*

10. *That it is submitted that the case of the petitioners is squarely covered with the case of Lata Singh Versus State of U.P. & another, AIR 2006 SC 2522."*

5. In short, it has been stated that the petitioner no.1 Kiran Rawat is major and is a Hindu and the petitioner no.2 Mohammed Rizwan is also major and a Muslim by faith. They love each other and have started living together. The mother of the petitioner no.1, however, is unhappy with this relationship and has approached the Police, who constantly harass the petitioners and disturb their peaceful life. That, the petitioners wish to marry in the near future is not stated in the writ petition. It has also not been stated for how long the petitioners have enjoyed this live-in-relationship. The petitioners have not stated their current marital status. They have also not stated anywhere in the writ petition any specific instance of the police coming and knocking their doors or taking them to the police station. There is no averment in the writ petition regarding their neighbours and the society in general recognizing them as enjoying a relationship in the nature of marriage.

6. Petitioners have come up to this court with a mere allegation, which has not been substantiated by any specific pleading and have prayed that this court should issue a mandamus to the police not to harass them.

7. After carefully going through the pleadings, this court finds that the writ petition is supported by the affidavit of the petitioner no.1 stating herself to be major and in support of her claim filing a copy of her Aadhaar Card. Mohammed Rizwan, the petitioner no.2 has not filed any Affidavit. It has not been stated by Mohammed Rizwan that he is major and otherwise competent to marry the petitioner no.1. In the array of the petitioners, they have mentioned two different addresses. No details of common current address has been disclosed in the writ petition except for stating that the petitioners are living in a rented accommodation at Trivedi Nagar under Police Station Hasan Ganj, Lucknow. The petitioners claim benefit of judgement rendered by the Hon'ble Supreme Court in the case of ***Lata Singh versus state of UP and another, 2006 (5) SCC 475***, where the Supreme Court observed as follows: –

"17. The caste system is a curse on the nation and the sooner it

is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or interreligious marriage the maximum they can do is that they can cut off social relations with their son or a daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or interreligious marriage. We, therefore, direct that the administration/police authorities throughout the country Will see to it that if any boy or girl who is a major undergoes inter-caste or interreligious marriage with a woman or man who is a major, the couple are not harassed by any one and not 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."

8. The Supreme Court has further observed in **S. Khushboo Vs. Kanniammal, 2010 (5) SCC 600** as follows: –

"21. While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of adultery as defined under section 497 I.P.C. At this juncture, we may refer to the decision given by this court in Lata Singh versus State of UP and Another AIR 2006 Supreme Court 2522, wherein it was observed that a live in relationship between two consenting adults of Heterogenic sex does not amount to any offence (with the obvious exception of adultery), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or to live with anyone she likes. In that case, the petitioner was a woman who had married a man belonging to another caste and had begun cohabitation with him. The petitioner's brother had filed a criminal complaint accusing her husband of offences under section 366 and 368 I.P.C., thereby leading to commencement

of trial proceedings. This Court had entertained the Writ petition and granted relief while quashing the criminal trial. Furthermore, the court had noted that no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the court. .."

9. The Supreme Court observed that a man and a woman living together without marriage cannot be construed as an offence. It said that there was no law which prohibits live in relationships or premarital sex. Living together was interpreted as a facet of right to life.

10. However these observations of the Supreme Court were made in the context of facts as mentioned before it. A news-magazine conducted a survey on the subject of sexual habits of people residing in the bigger cities of India. One of the issues discussed there and was the increasing incidence of premarital sex. Thereafter the magazine published the views expressed by various persons, including the appellant a well-known actress. Expressing her personal opinion, she noted the increasing incidence of premarital sex, especially in the context of live in relationships and called for societal acceptance of the same. Several persons and organizations filed as many as 23 criminal complaints against the appellant for the offences contemplated under sections 499, 500, 509, 153, and 292 I.P.C. read with Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act 1986. Most of the complaints were filed in various districts of Tamil Nadu State while one was filed in Madhya Pradesh. The appellant then approached the Madras High Court under Section 482 Cr.P.C. seeking quashing of such proceedings. Taking the view that the questions involved in the complaints required consideration by the trial judge, the High Court rejected the plea of the appellant. However, the High Court directed all the complaints to be consolidated and tried by one Chief Judicial Magistrate. Aggrieved, the appellant filed the appeal before the Supreme Court contending that the respondent /complainants were not persons aggrieved within the meaning of Section 199(1) of the Cr.P.C. and could not therefore maintain the complaints; the opinion expressed by the appellant was protected by Article 19 (1) (a) of the Constitution; allegations made in the complaints even if taken on the face value, did not disclose any offence under the provisions specified therein; and the criminal proceedings were instituted in a malafide manner by workers of a particular political party to vilify the appellant and gain undue political mileage.

11. Allowing the Appeals, the Supreme Court observed that there is a necessity of protecting the freedom of speech and

expression and for promoting a culture of open dialogue when it comes to societal attitudes. It observed further that no doubt in India marriage is an important social institution, that there are certain individuals or groups who do not hold the same view. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not coextensive. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalise the author. The Supreme Court considered the ingredients necessary for various sections of the I.P.C. invoked and referring to several decisions both from India and foreign countries which mandated that obscenity should be gauged with respect to contemporary community standards that reflect the sensibilities as well as the tolerance levels of an average reasonable person, the Supreme Court observed that :

".....the appellant had merely referred to the increasing incidence of premarital sex and called for its societal acceptance. At no point of time the appellant described the sexual act or said anything that could arouse sexual desires in the mind of a reasonable and prudent reader. The respondents claim that the appellants remarks could have the effect of misguiding young people by encouraging them to indulge in premarital sex was a little far-fetched since the appellant had not directed her remarks towards any individual or group in particular. For the sake of argument, even if it were to be assumed that the appellants statements would encourage some people to engage in pre-marital sex, no legal injury has been shown since the latter is not an offence. There is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting with the exception of adultery as defined under section 49 7IPC. ..."

12. The Supreme Court judgement in the case of **S. Khushboo (supra)** as aforesaid has to be read in the context of the facts stated therein.

13. In the case of **Madan Mohan Singh versus Rajnikant 2010 (9) SCC 209**, the Supreme Court observed that live in relationship if it continued to be in existence for a long time and not termed as walk in and walk out, then it will lead to a presumption of marriage between the parties.

14. Similar views were expressed in **Indra Sarma versus V.K.V. Sarma 2013 (15) 755**; where it was held that live in relationships may last for a considerable time and can lead to standards of dependency and vulnerability and with the increase

in number of live in relationships there must be sufficient protection, specially for women and those children who are born out of such relationships. The law cannot promote premarital sex, and live in relationships are personal and people can give their opinion in favour or against it. The legislature must consider this issue and enact separate legislation so that protection for women and children born out of live-in relationships can be provided.

15. In ***Dhanu Lal versus Ganesh Ram 2015 (12) SCC 301***, the Supreme Court decided that couples in live in relationships will be presumed legally married. It was also held that the woman in live in relationships would be eligible to inherit the property after the death of a partner.

16. In ***Nandakumar and Another versus State of Kerala 2018 SCC online Supreme Court 492***, the Court emphasised that live in relationship is now recognized by the legislature itself and it has found its place under the provisions of protection of women from Domestic Violence Act 2005.

17. Live-in relationship is nowhere defined in the Domestic Violence Act but the Supreme Court in ***D Velusamy versus D Patchaiammal 2010 (10) SCC 469***; while considering the definitions given under Section 2 of the Domestic Violence Act, dealt with definition of "domestic relationship", as a relationship in the nature of marriage. It laid down certain conditions which if fulfilled would amount to a "domestic relationship", such conditions include long duration of live-in relationship, a shared household, pooling of resources and financial arrangements, sexual relationship, holding out to the society as husband and wife .

18. The Observations of the Supreme Court as aforesaid however cannot be considered to promote such relationships. Law traditionally has been biased in favour of marriage. It reserves many rights and privileges to married persons to preserve and encourage the institution of marriage. the Supreme Court is simply accepting a social reality and it has no intention to unravel the fabric of Indian family life. Awareness has to be created in young minds not just from the point of view of emotional and societal pressures that such relationships may create, but also from the perspective that it could give rise to various legal hassles on issues like division of property, violence and cheating within live-in relationships, rehabilitation in case of desertion by or death of a partner and handling of custody and other issues when it comes to children born from such relationships. Partners in a live-in relationship do not enjoy an automatic right of inheritance to the property of their

partner. In **Vidhyadhar Versus Sukhrana Bai 2008 (2) SCC 238**, the Supreme Court created some hope for persons living together as husband and wife by providing that those who have been living in a relationship for a reasonably long period of time can receive property in inheritance from her live-in partner. In this case property of a Hindu male upon his death intestate was given to a woman with whom he enjoyed a live in relationship, even though he had a wedded wife alive.

19. The Supreme Court has observed on several occasions that section 125 Cr.P.C. is not meant for granting of maintenance to the "other woman", where a man having a living lawfully wedded wife either married a second time or started living with a concubine it has refused to extend the meaning of the word wife as denoted in section 125 of the Cr.P.C. to include such live-in partners for maintenance claims. Persons entering into marriage are governed either by their personal laws or laws such as the Special Marriage Act, 1954. While marriage between Hindus is considered being a Samskara (a sacrament), and under Muslim, Christian, Jewish and Parsi law marriage is a contract. Marriages are solemnized and/or registered under the provisions of the Special Marriage Act, 1954 and then alone they become a civil contract. A marriage is deemed to have ended only after a formal divorce is declared by a Court of law. "Maintenance" as defined under the Hindu Adoption and Maintenance Act 1956 includes in all cases provisions for food, clothing, residence, education and medical attendance and treatment and Section 18 of the Act confers the right on the Hindu wife to be maintained by husband. However, the Act of 1956 does not include concubines or mistress in the list of persons to be maintained.

20. Muslim women also derive the right to maintenance from the Shariat and the Muslim Women (Protection of Rights on Divorce) Act 1986. The Hindu law gives the widow of a male Hindu the status of a class one heir giving her the right to one share with absolute ownership over her deceased husband's property if he dies intestate. In Muslim law, a widow having children is entitled to 1/8 of her deceased husband's property and one fourth of it if they are childless.

21. However, in Muslim law no recognition can be given to sex outside marriage. "**Zina**" which has been defined as any sexual intercourse except that between husband and wife includes both extramarital sex and premarital sex and is often translated as fornication in English. Such premarital sex is not permissible in Islam. In fact any sexual, lustful, affectionate acts such as kissing, touching, staring etc. are "**Haram**" in Islam before marriage because these are considered parts of "**Zina**" which

may lead to actual "**Zina**" itself. The punishment for such offence according to Quran (chapter 24) is hundred lashes for the unmarried male and female who commit fornication together with the punishment prescribed by the "Sunnah" for the married male and female that is stoning to death.

22. Following the ratio of the aforesaid **Lata Singh and S. Khushboo** judgements of the Supreme Court, this Court has delivered several judgements stating that if the petitioners are major and otherwise competent to enter into contract, no fetter can be placed upon the choice of person with whom she is to stay nor anyone can restrict her. No person can be allowed to threaten or commit or instigate acts of violence or harass adult persons who undergo inter-caste or inter religious marriage. The administration/police authorities can be directed to see to it that the couple, upon being otherwise major and eligible, to contract, should not be harassed by anyone. It has also been observed in some judgements that live in relationship between two consenting adults of heterogenic sex does not amount to any offence.

23. Against this background, the petitioners have approached this court praying for the aforesaid mandamus to be issued to the respondents. Normally, in such type of writ petitions, the courts call upon the learned counsel appearing for the petitioners to identify the petitioners that is the boy and girl having been present before the Court and to verify the documents available before the court or it adopts other methods like verification of Aadhaar cards, age proof if any, or directs ossification test etc to find out the truth of the statements made on oath in the Writ petition. However, in this case petitioners do not state that they are validly married couple. They do not claim for protection of the marital relationship which is allegedly being interfered with by their parents or relatives who are private respondents. The petitioners only allege that they being major are entitled to live with whomsoever they like and the mother of petitioner No.1 is unhappy with this relationship.

24. Writ jurisdiction being extraordinary jurisdiction is not made to resolve such type of dispute between two private parties. We believe that it is a social problem which can be uprooted socially and not by the intervention of the Writ Court in the garb of violation of Article 21 of the Constitution of India unless harassment is established beyond doubt. If there is any real grievance of a live-in couple against their parents or relatives who are allegedly interfering with their live-in status which goes to such an extent that there is a threat of life, they are at liberty to lodge an F.I.R under Section 154 (1) or Section 154 (3) Cr.P.C, with the Police, move an application under

section 156 (3) before the competent Court or file a complaint case under Section 200 Cr.P.C. Similarly, in case the parents or relatives, find that illegally their son or daughter has eloped for the purpose of marriage, although he or she is underage or not inclined or the respondents are behaving violently, they are equally at liberty to take steps in a similar manner. But, when neither of the actions are taken against each other, and only a fictitious application with certain allegations, particularly by such persons as the petitioners herein enjoying a live-in relationship, is moved under Writ jurisdiction of the High Court, it appears to be a circuitous way to get the seal and signature of the High Court upon their conduct without any verification of their age and other necessary aspects required to be done by the appropriate authority.

25. We cannot allow the petitioners to raise disputed questions of fact under Writ jurisdiction as it would be a wrong assumption of such extraordinary jurisdiction.

26. The writ petition is, accordingly, ***dismissed***.

27. In case the petitioners approach the appropriate Court of law or to the police authority concerned raising their grievances, the same may be considered in accordance with law.

Order Date :- 28.4.2023

ML/Rahul