

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 5045/2021

----Petitioners

Versus

----Respondents

For Petitioner(s) : Mr. Gajendra Panwar
For Respondent(s) : Mr. Arun Kumar PP

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

Judgment

Reportable

15/09/2021

1. In wake of second surge in the COVID-19 cases, abundant caution is being maintained, while hearing the matters in Court, for the safety of all concerned.
2. This criminal misc. petition under Section 482 Cr.P.C. has been preferred claiming the following reliefs:

"(a) The respondents police authorities be directed to provide Police Protection to the petitioners to protect their life and liberty.

(b) The private respondent may kindly be restrained from interfering in peaceful life of the petitioners and their family.

(c) Any other order or direction which this Hon'ble Court deem just and proper in the facts and circumstances of the case may kind be issued in favour of the petitioners."

3. The facts of the present case are that petitioner is in live-in relationship with petitioner even when she was married with one

4. As the averments made in the petition would reveal, the petitioner No.1 has serious issues regarding her safety and security, and thus, this petition has been preferred seeking protection, on count of the situation, which has arisen due to her live-in relationship with the petitioner No.2.

5. The petitioner No.1 has alleged in the petition that due to continuous harassment and violence, resulting out of her giving birth to a girl child, she had to make a choice of entering into a live-in relationship to live life with liberty and dignity.

6. Learned counsel for the petitioners has drawn the attention of this Court towards the agreement entered into between petitioner No.1 and petitioner No.2 regarding live-in relationship dated 13.09.2021, which is on record as Annexure-3.

7. Learned counsel for the petitioners submitted that as per the record, the age of petitioner No.1 is 26 years and that of petitioner No.2 is 25 years.

8. Learned counsel for the petitioners further submitted that the live-in relationship agreement has been drawn on a stamp paper and the same is duly notarized and attested.

9. Learned counsel for the petitioners thus submitted that both the petitioners, being major, have agreed to live together in live-in relationship with their free will and consent.

10. Learned counsel for the petitioners also submitted that the only prayer made by the petitioners in the present petition is to seek protection, as right to life is a fundamental right enshrined under Article 21 of the Constitution of India, and protection of right to life is imbibed in the same, and thus, such fundamental right cannot be done away with, except by due process of law.

11. Learned counsel for the petitioners further submitted that the right to life and protection extends unequivocally to both the petitioners, and the legality or illegality of their relationship need not be gone into, as the issue raised is only of protection.

12. Learned counsel for the petitioners has emphatically submitted that the present petitioners are not seeking approval of this Hon'ble Court regarding their relationship, but are merely seeking rightful protection of their life and liberty, to which they are entitled under the Constitution of India as citizens of this country. As per learned counsel, the harassment and coercion at the hands of the family members and the relationship is likely to affect their right to life.

13. Learned Public Prosecutor however, opposed the present petition on the ground that the petitioners are not having a relationship, which is recognized by law, and therefore, any kind of protection, if given by this Court, would be against the settled principles of law.

14. Learned Public Prosecutor relied upon the order dated **15.06.2021** passed by a Division Bench of the Hon'ble Allahabad High Court in **Smt. Geeta & Anr. Vs. State Of Uttar Pradesh & Ors. (Writ-C No.7542/2021)**, whereby the Hon'ble High Court has denied the protection, while observing that the live-in relationship with an already married person is illegal, and the Court, since is unable to condone the illegality, therefore, the orders cannot be passed under Article 21 of the Constitution of India, which guarantees freedom of life to all citizens, but such freedom has to be within the ambit of law.

15. Learned Public Prosecutor has also referred to an order passed by this Hon'ble Court in **Rashika Khandal & Anr. Vs. State of Rajasthan & Ors. (S.B. Criminal Misc. Petition No.3023/2021 decided on 07.05.2021)**, wherein this Hon'ble Court at Jaipur Bench has observed that a live-in relationship involving married and unmarried persons is impermissible. The Hon'ble Court, while passing the said order, has placed reliance upon a landmark decision rendered by the Hon'ble Supreme Court in **D. Velusamy Vs. D. Patchaiammal, reported in (2010) 10 SCC 469**, wherein the Hon'ble Apex Court observed that a couple must hold themselves out to society being akin to spouses and must be of legal age to marry or qualified to enter into a legal marriage, including being unmarried, and thus, this Hon'ble Court has dismissed the plea of the petitioners in the said case for grant of protection to them.

16. The judgments rendered by the Hon'ble High Courts across the country were also cited before this Court, which mostly chided the illegal relationships and pertain to denial of the protection, owing to fear of disruption in social fabric, but in some judgments

protection was granted, as the courts did not wish to delve into the issue of morality and immorality of such relationship, but stuck to Article 21 of the Constitution of India. Some of the recent judgments whereby the protection was denied, are as follows:

(a) Simranjeet Kaur & Anr. Vs. State of Haryana & Ors. (CRWP-7799-2021 (O&M) decided by the Hon'ble Punjab & Haryana High Court on 18.08.2021).

(b) Seema Devi & Anr. Vs. State of Rajasthan & Ors. (S.B. Criminal Misc. Petition No.4796/2021 decided by this Hon'ble Court at Jaipur Bench on 16.08.2021).

(c) Smt. Maya Devi & Anr. Vs. State of Rajasthan & Ors. (S.B. Criminal Misc. Petition No.3314/2021 decided by this Hon'ble Court at Jaipur Bench on 13.08.2021).

(d) Smt. Aneeta & Anr. Vs. State of U.P. & ors. (Writ-C No.14443/2021 decided by a Division Bench of the Hon'ble Allahabad High Court on 29.07.2021).

(e) Smt. Surabhi Vs. State of U.P. & Ors. (Writ-C No.5455/2021 decided by a Division Bench of the Hon'ble Allahabad High Court on 21.06.2021).

(f) Gulza Kumari & Anr. Vs. State of Punjab & Ors. (CRWP No.4199/2021 (O&M) decided by the Hon'ble Punjab & Haryana High Court on 11.05.2021).

(g) Moyna Khatun & Anr. Vs. State of Punjab & Ors. (CRWP No.2421/2021 decided by Hon'ble Punjab & Haryana High Court on 10.03.2021).

(h) Daya Ram & Anr. Vs. State of Haryana & Ors. (Criminal Writ Petition No.5212/2021 decided by the Hon'ble Punjab & Haryana High Court on 10.06.2021).

17. After hearing learned counsel for the parties as well as carefully examining the record of the case, alongwith the facts of the present case, as well as the varied judgments being passed by the Hon'ble High Courts across the country and the Hon'ble Supreme Court, deems it prudent to address the present situation at length.

18. The issues before this Court for consideration are:

- (i) whether the State ought to intervene in the personal relationships of adult citizens;*
- (ii) as to what would prevail, in case there is a conflict between law and morality; and*
- (iii) whether the State, having a duty of protecting its citizens, is having any kind of restrictions, reservations or exceptions.*

19. Coming to the issue of intervention in personal relationship, which includes question of privacy and autonomy of an individual in a personal relationship, this Court takes note of the judgment rendered by the Hon'ble Supreme Court in ***Navtej Singh Johar Vs. Union of India (Writ Petition (Cri.) No.76 of 2016, decided on 06.09.2018***), in which, the Hon'ble Apex Court, while enunciating the principle of autonomy, succinctly laid down that any surrender of one's autonomy to another must be willful, and their intimacy and privacy is a matter of their choice. The Hon'ble Supreme Court, in the said judgment, further held that such autonomy inevitably forms part of dignity of an individual. Relevant portion of the said judgment reads as under:-

"64.. . . . The right to privacy enables an individual to exercise his or her autonomy, away from the glare of societal expectations. The realisation of the human

personality is dependent on the autonomy of an individual. In a liberal democracy, recognition of the individual as an autonomous person is an acknowledgment of the State's respect for the capacity of the individual to make independent choices. The right to privacy may be construed to signify that not only are certain acts no longer immoral, but that there also exists an affirmative moral right to do them."

In the said judgment, Hon'ble Mr. Justice Deepak Misra (then CJI), also pointed out the duty of the Courts to be guided by constitutional morality by upholding the values enshrined within the constitution and not succumbing to societal morality.

The said relevant part of the judgment as follows :

"119. The duty of the constitutional courts is to adjudge the validity of law on well-established principles, namely, legislative competence or violations of fundamental rights or of any other constitutional provisions. At the same time, it is expected from the courts as the final arbiter of the Constitution to uphold the cherished principles of the Constitution and not to be remotely guided by majoritarian view or popular perception. The Court has to be guided by the conception of constitutional morality and not by the societal morality.

120. We may hasten to add here that in the context of the issue at hand, when a penal provision is challenged as being violative of the fundamental rights of a section of the society, notwithstanding the fact whether the said section of the society is a minority or a majority, the magna cum laude and creditable principle of constitutional morality, in a constitutional democracy like ours where the rule of law prevails, must not be allowed to be trampled by obscure

notions of social morality which have no legal tenability. The concept of constitutional morality would serve as an aid for the Court to arrive at a just decision which would be in consonance with the constitutional rights of the citizens, howsoever small that fragment of the populace may be. The idea of number, in this context, is meaningless; like zero on the left side of any number.

121. In this regard, we have to telescopically analyse social morality vis-à-vis constitutional morality. It needs no special emphasis to state that whenever the constitutional courts come across a situation of transgression or dereliction in the sphere of fundamental rights, which are also the basic human rights of a section, howsoever small part of the society, then it is for the constitutional courts to ensure, with the aid of judicial engagement and creativity, that constitutional morality prevails over social morality."

20. 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, until and unless the legality of such relationship is under challenge. 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 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.”

21. The Apex Court has laid down in no uncertain terms that the emphasis to be given to public morality is minuscule, 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.

22. 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.

The Hon'ble Supreme Court, in its sterling judgment rendered in ***K.S.Puttaswamy v. Union of India (2017) 10 SCC 1***, held in no uncertain terms that privacy includes at its core, the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. The Apex Court in the same pronouncement also laid down that privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy.

23. The emphasis on autonomy and privacy was also more specifically dealt with in the ambit of the institution of marriage in ***Joseph Shine v. Union of India, reported in (2018) 2 SCC 189.***

Pointing out the institution of marriage not to be a private space devoid of constitutional rights, the Apex Court of India, in the aforesaid judgment, observed thus:

"50. The right to privacy depends on the exercise of autonomy and agency by individuals. In situations where citizens are disabled from exercising these essential attributes, Courts must step in to ensure that dignity is realised in the fullest sense. Familial structures cannot be regarded as private spaces where constitutional rights are violated. To grant immunity in situations when rights of individuals are in siege, is to obstruct the unfolding vision of the Constitution."

24. It is well- settled that it is not in the Court's domain to intrude upon an individual's privacy. Any scrutiny or remark upon the so-called morality of an individual's relationship and blanket statements of condemnation especially in matters where it is not called into question, to begin with, would simply bolster an intrusion upon one's right to choice and condone acts of unwarranted moral policing by the society at large.

25. 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.*** Opining on the right to protection invoked by prisoners and convicts, 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 prisoners and convicts exempt from this.

26. Similarly, while delving into the issue of the increasing number of custodial deaths in India, the Hon'ble Apex Court in ***D.K. Basu v. State of West Bengal, reported in AIR 1997 SC 610***, elaborated upon the scope of Article 21, as follows:

“ If the functionaries of the Government become law breakers, it is bound to breed contempt for law and would encourage lawlessness and every man would have the tendency to become law unto himself thereby leading to anarchism. No civilised nation can permit that to happen. Does a citizen shed off his fundamental right to life, the moment a policeman arrests him? Can the right to life of a citizen be put in abeyance on his arrest? These questions touch the spinal court of human rights jurisprudence. The answer, indeed, has to be an emphatic 'No'. The precious right guaranteed by Article 21 of the Constitution of India cannot be denied to convicted undertrials, detenues and other prisoners in custody, except according to the procedure established by law by placing such reasonable restrictions as are permitted by law.”

“ The latin maxim salus populi est supreme lex (the safety of the people is the supreme law) and salus republicae est suprema lex (safety of the state is the supreme law) co-exist and are not only important and relevant but lie at the heart of the doctrine that the welfare of an individual must yield to that of the community. The action of the State, however must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. . . .”

“ . . . His Constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be qualitative difference in the methods of interrogation of such a person as compared to an ordinary criminal. Challenge of terrorism must be met with innovative ideas and approach. State terrorism is not answer to combat terrorism. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to 'terrorism'. That would be bad for the State, the community and above all for the Rule of Law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become law unto themselves. that the terrorist has violated human rights of innocent citizens may render him liable for punishment but it cannot justify the violation of this human rights expect in the manner permitted by law. . . . ”

27. The sanctity and supremacy of law must be protected at all costs. Even the due process of law through which the fundamental rights of any person are taken away must conform with the principles of justice and fair play and has to be reasonably administered according to the circumstances of the case i.e. there must be a proportionality between the illegality of the act and the right taken away through the due process of law. In ***Olga Tellis and Ors. v. Bombay Municipal Corporation, reported in AIR 1986 SC 180***, elaborating upon the procedure established by law to be resorted to in order to deprive him of his fundamental right, the Hon'ble Apex Court observed as under:

"Just as a mala fide act has no existence in the eye of law, even so, unreasonableness vitiates law and procedure alike. It is therefore essential that the procedure prescribed by law for depriving a person of his fundamental right must conform the norms of justice and fair play. Procedure, which is just or unfair in the circumstances of a case, attracts the vice of unreasonableness, thereby vitiating the law which prescribes that procedure and consequently, the action taken under it. . . ."

28. Elucidating upon the expanded meaning attributed to Article 21 of the Constitution, the Hon'ble Supreme Court in **S.S. Ahluwalia v. Union of India, reported in 2001 (4) S.C.C. 452**, categorically laid down that it is the duty of the State to create a climate where members of the society belonging to different faiths, caste and creed live together and, therefore, the State has a duty to protect their life, liberty, dignity and worth of an individual which should not be jeopardized or endangered. This constitutional obligation assumes greater paramountcy when the victim belongs to the weaker section of the community, as was observed in **Bandhua Mukti Morcha v. Union of India and Others (1997) 10 SCC 549**.

29. A bare perusal of the precedent law of **Mohammed Ajmal Amir Kasab & Ors. Vs. State of Maharashtra & Ors., reported in (2012) 9 SCC 1**, whereby 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 trail until after sentencing. Furthermore the then minister of state for Home

affairs RPN Singh submitted before the parliament that the Government of Maharashtra along with the Indo-Tibetian border police incurred costs above 31.39 crores to protect the terrorist during his trial. 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 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.

30. 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".

31. Had there been a question before this Court with regards the morality/ legality of live- in relationships and matters connected thereto, then perhaps the answer would have required more deliberation along those lines. However, in the context of the limited question this Court is posed with pertaining to the application of Article 21 of the Constitution of India and it is clear that the right to claim protection under this Article is a constitutional mandate upon the State and can be availed by all

persons alike. There arises no question of this right to be waived off even if the person seeking protection is guilty of an immoral, unlawful or illegal act, as per the precedent law cited of the Hon'ble Apex Court. However, in this case, this Court does not wish to delve into the sanctity of relationships.

32. 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.

33. This Court fully values the principle that at all junctures constitutional morality has to have an overriding impact upon societal morality.

This Court cannot sit back and watch the transgression or dereliction in the sphere of fundamental rights, which are basic human rights.

The public morality cannot be allowed to overshadow the constitutional morality, particularly when the legal tenability of the right to protection is paramount.

34. This Court is duty bound to act as a protector of the rights of the individuals, which are under siege with the clear intention of obstructing the vision of Constitution.

35. The Hon'ble Apex Court has even gone to the extent of the duty of 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.

36. The aforementioned three issues/questions, as mentioned hereinabove, stands answered accordingly.

37. Thus, in view of the above, the present petition is disposed of, with a direction to the petitioners to appear before the Station House Officer, Police Station, Feench, Luni, District Jodhpur alongwith appropriate representation regarding their grievance. The Station House Officer, Police Station, Feench, Luni, District Jodhpur shall in turn hear the grievance of the petitioners, and after analyzing the threat perceptions, if necessitated, may pass necessary orders to provide adequate security and protection to the petitioners.

38. It is made clear that any observation in this order shall not affect any criminal and civil proceedings initiated against the petitioners.

(DR. PUSHPENDRA SINGH BHATI),J.

SKant/-



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