

115 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP No. 4725 of 2021
Date of Decision: 03.06.2021

Seema Kaur and another Petitioners

Versus

State of Punjab and others ... Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Digvijay Nagpal, Advocate
for the petitioners.

SANT PARKASH, J. (ORAL)

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

The petitioners, who are of the age of 17 years and 20 years respectively, are seeking protection of their life and liberty at the hands of the private respondents, who are none other than the immediate family members of petitioner No. 1.

In brief the facts as stated are, that Ms. Seema Kaur petitioner No. 1 is aged 17 years and 3 months with her date of birth being 02.02.2004 whereas Mr. Gurpal Singh petitioner No. 2 is 20 years old, with his date of birth being 20.07.2001. The parents of petitioner No. 1 wanted her to marry a person of their choice as they had come to know about her love affair with petitioner No. 2. Petitioner No. 1 left her paternal home on 17.05.2021 and went to petitioner No. 2 and since then, both of them are residing here and there. The petitioners decided to live together till such time as they could solemnise a marriage, i.e. on attaining the marriageable age. It is also stated that the relationship would never be accepted by the private respondents and both the petitioners belong to different castes. The petitioners have already

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approached the Senior Superintendent of Police, Bathinda vide representation dated 17.05.2021 (Annexure P-3) seeking protection at the hands of the private respondents, but there has been no response. Fearing a threat to their life, as the relationship was not acceptable to the parents and family members of petitioner No. 1 have threatened to kill the petitioners, the instant criminal writ petition has been preferred.

Notice of motion to the official respondents only.

Mr. Bhupender Beniwal, Assistant Advocate General, Punjab accepts notice on behalf of the official respondents-State and submits that the couple seeking protection are not married and according to their own pleadings are in a live in relationship. He would submit that the Coordinate Benches have recently dismissed similar matters, where protection was sought by persons who are in live-in relationship.

I have heard the learned counsel for the parties and with their assistance have gone through the pleadings of the case.

The petitioners have approached this court under Article 226 of Constitution of India seeking protection of their life and liberty at the hands of the private respondents, with a further prayer that they be restrained from interfering in the peaceful live-in relationship of the petitioners. The petitioners have not approached this court either seeking permission to marry or for approval of their relationship. The limited prayer as noted is for grant of protection to them, fearing the ire of family members of petitioner No.1, on account of the parties residing together without the sanctity of a valid marriage.

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This Court in the past and also recently has allowed protection to those runaway couples, even though they were not married and were in a live-in relationship, and in cases where the marriage was invalid (as one of the parties though a major, was not of age as per Section 5 of the Hindu Marriage Act). Reference in this regard can be made to the judgment rendered by the Division Bench in *Rajwinder Kaur and another Versus State of Punjab, 2014 (4) RCR (Criminal) 785* where it was held that marriage is not a must for security to be provided to a runaway couple. The police authorities were directed to ensure that no harm was caused by any one to the life and liberty of the couple. Similar views have been taken by the Coordinate Benches in the case of *Rajveer Kaur Versus State of Punjab, 2019 (3) RCR (Civil) 478* and in *Priyapreet Kaur Versus State of Punjab, 2021 (1) RCR (Civil) 604* amongst others. Different High Courts too have allowed protection to runaway couples who are not married. Again reference can be made to a recent judgement rendered by the Allahabad High Court in *Kamini Devi vs. State of UP, 2021(1) RCR (Civil) 421* and in *Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396*.

The concept of a live in relationship may not be acceptable to all, but it cannot be said that such a relationship is an illegal one or that living together without the sanctity of marriage constitutes an offence. Even under The Protection of Women from Domestic Violence Act, 2005, a woman who is in a 'domestic relationship' has been provided protection, maintenance etc. It is interesting to note that the word 'wife' has not been used under the said Act. Thus, the female live-in-partners and the children of live-in-couples have been accorded adequate protection by the Parliament.

Article 21 as enshrined in the Constitution of India provides for its citizen to a right to life and personal liberty, with a stipulation that they shall not be deprived of it except according to a procedure established by law. In the case of *Shakti Vahini Versus Union of India and others, 2018 (5) R.C.R (Criminal) 981*, the Supreme court has held “The right to exercise Assertion of choice is an inseparable facet of liberty and dignity. That is why the French philosopher and thinker, Simone Weil, has said:-“Liberty, taking the word in its concrete sense consists in the ability to choose.” At this stage, one cannot also lose sight of honour killings which are prevalent in northern parts of India, particularly in parts of States of Punjab, Haryana, Rajasthan and Uttar Pradesh. Honour killing is a result of people marrying without their family’s acceptance, and sometimes for marrying outside their caste or religion. Once an individual, who is a major, has chosen his/her partner, it is not for any other person, be it a family member, to object and cause a hindrance to their peaceful existence. It is for the State at this juncture, to ensure their protection and their personal liberty. It would be a travesty of justice in case protection is denied to persons who have opted to reside together without the sanctity of marriage and such persons have to face dire consequences at the hands of persons from whom protection is sought. In case such a course is adopted and protection denied, the courts would also be failing in their duty to provide its citizens a right to their life and liberty as enshrined under Article 21 of the Constitution of India and to uphold to the Rule of law.

The petitioners herein have taken a decision to reside together without the sanctity of marriage and it is not for the courts to judge them on

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their decision. The Supreme Court in its decision rendered in *S. Khushboo v. Kanniammal, (2010) 5 SCC 600* has held that live in relationship is permissible and the act of two adults living together cannot be considered illegal or unlawful, while further holding that the issue of morality and criminality are not co-extensive. If the petitioners herein have not committed any offence, this court sees no reason as to why their prayer for grant of protection cannot be acceded to. Therefore, with due respect to the judgments rendered by the Coordinate Benches, who have denied protection to couples who are in live in relationship, this court is unable to adopt the same view.

Without entering upon an exercise to evaluate the evidentiary value of the documents placed on the file, I dispose of this petition with directions to respondent No.2-Senior Superintendent of Police, Bathinda to decide the representation of the petitioners (Annexure P-3) within a period of one week from the date of receipt of a copy of this order and grant them protection, if any threat to their life and liberty is perceived. It is made clear that this order shall not be taken to protect the petitioners from legal action for violation of law, if any committed by them.

**(SANT PARKASH)
JUDGE**

03.06.2021
Maninder

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