

113 CRWP-7874 of 2021

Paramjit Kaur and another v. State of Punjab and others

Present: Mr. Dinesh Mahajan, Advocate,
for the petitioners.

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Case heard via video conferencing.

By this petition, filed under the provisions of Article 226 of the Constitution of India, the petitioners seek issuance of a writ in the nature of mandamus, directing the official respondents, especially respondents no.2 and 3, not to harass them at the instance of respondents no.4 to 6.

Learned counsel for the petitioners submits that petitioner no.2 and respondent no.4 having earlier been married, petitioner no.2 filed a divorce petition, which was however dismissed, upon which an appeal was filed by him before this court which is still pending; and in an order passed in that appeal on 30.09.2008 (copy Annexure P-4), it was observed by this court that there are no chances of reconciliation [(though that possibly may have been only the contention made by counsel appearing for the appellant (petitioner no.2 herein).]

He further submits that the petitioners are in a live-in relationship with each other and are in apprehension of danger to their life and liberty at the hands of respondents no.4 to 6, with the SHO, Police Station Samrala, District Ludhiana, harassing the petitioners at the instance of the said respondents.

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 (Law**

Finder Doc Id # 1864359).

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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 has been unconstitutional and violative of Articles 14, 15 and 21 of the Constitution of India, (the said provision being one providing punishment for adultery).

Consequently, *prima facie* at least at this stage, no offence would seem to have been committed by the petitioners, they being adults in a live-in-relationship with each other, whether or not any divorce petition is pending before this court, which of course it is in the present case, by way of FAO-M-146 of 2008.

Consequently, notice of motion is issued, with Mr. Rana Harjasdeep Singh, learned DAG, Punjab, accepting notice at the asking of the court on behalf of respondents no.1 to 3, with respondents no.4 to 6 be served by normal process.

In the meanwhile, respondent no.2, i.e. the SSP, Khanna, shall ensure that the life and liberty of the petitioners is duly protected at the hands of respondents no.4 to 6, as also at the hands of the SHO, with obviously a very adverse view to be taken by this court in case the petitioners are again harassed by the SHO on account of any live-in-relationship that they have with each

