

Court No. - 28

Case :- WRIT - C No. - 27338 of 2023

Petitioner :- Razia And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sharad Chand Rai,Anvir Singh

Counsel for Respondent :- C.S.C.

Hon'ble Surendra Singh-I,J.

1. Heard Shri Sharad Chand Rai, learned counsel for the petitioners, Shri Upendra Nath, learned Additional Chief Standing Counsel assisted by Shri Yogesh Kumar, learned Standing Counsel appearing on behalf of the State and perused the material available on record.

2. The instant writ petition has been filed seeking a direction in the nature of mandamus to the private respondent not to interfere in the peaceful living of the petitioners. Further the direction has been sought to respondent no. 2 and 3 to provide protection to the petitioners.

3. It is submitted by the learned counsel for the petitioners that both the petitioners are major. The date of birth of petitioner no. 1 as mentioned in her Pan Card & Aadhar Card, is 13.04.2001 and the date of birth of petitioner no. 2 as mentioned in his Aadhar Card and Pan Card is 01.01.1997. It is averred that both the petitioners are residing together peacefully out of their own free will in a live-in-relationship. It is further submitted that respondent no. 4, mother of the first petitioner and her family members are averse to the parties' live in relationship. She along with other family members, is harassing and disturbing the peaceful life of the petitioners. She has threatened the petitioners with dire consequences. The petitioners have apprehension of honour killing from her family members.

Petitioner no. 1 has moved an application dated 04.08.2023 to the Commissioner of Police, Commissionerate Gautam Budh Nagar seeking their protection but to no avail. It is submitted on behalf of the petitioners that both the petitioners intend to solemnize their marriage in near future. It is also stated that till date no FIR has been lodged relating to their live-in-relationship and both the petitioners are living together happily.

4. Looking to the nature of the order that this Court proposes to pass, issue of notice to the private respondent is dispensed with. However, in case the said respondent feels aggrieved by the order passed today, it shall be open to her to make an application in this decided petition.

5. Learned counsel appearing on behalf of the State has opposed the petition and submitted that both petitioner belong to different religious groups. Living in live-in-relationship is punishable as Zina (Adultery) in Muslim personal law.

6. Reliance has been placed by petitioners upon judgement of the Apex Court in **Lata Singh vs. State of Uttar Pradesh and another, (2006) 5 SCC 475**, where the Apex Court has held as under:

*“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 inter-religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious 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 inter-religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor 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.

(Emphasis by Court)

18. We sometimes hear of “honour” killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal-minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism.”

7. In **Gian Devi vs. Superintendent, Nari Niketan, Delhi and others, (1976) 3 SCC 234**, the three Judge Bench of the Apex Court has observed that where an individual is over eighteen years of age, no fetters could be placed on her choice on where to reside or about the person with whom she could stay:

*“.....Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is **sui juris** no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter.....”*

8. In **Shafin Jahan vs. Asokan K.M. & others, (2018) 16 SCC 368**, the Apex Court emphasized due importance to the right of choice of an adult person, which the Constitution accords to an adult person. The Court held:

“52. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is

ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realisation of a right is more important than the conferment of the right. Such actualisation indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition.”

9. A three Judge Bench of the Hon’ble Apex Court in **Soni Gerry vs. Gerry Douglas, (2018) 2 SCC 197**, where the daughter of appellant and respondent, who had attained the age of majority, expressed her desire to reside in Kuwait with her father, where she was pursuing her education, held:

“10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation.”

10. In the Case of **D. Velusamy vs. D. Patchajammal, (2010) 10 SCC 469**, the Apex Court 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 the following requisite criteria for a relationship in the nature of marriage:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

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

12. In **Nandakumar and another vs. State of Kerala, (2018) 16 SCC 602**, the Apex Court emphasized 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.

13. From the above discussion and the rulings of the Supreme Court, it is clear that a boy or girl, who have attained majority, is free to marry or live with a person of his/her choice and no one including his/her parents or anyone on their behalf can interfere in their right to freedom of choosing a partner which emanates from Right to Life and Personal Liberty guaranteed under Articles 19 and 21 of the Constitution of India.

14. Learned Counsel appearing on behalf of the State has placed reliance upon a Division Bench decision of this Court in **Kiran Rawat and another vs. State of U.P., 2023 LawSuit(All) 953** and submitted that the Court has refused to provide protection to couples residing together in a live-in-relationship.

15. From perusal of the judgment of this Court in **Kiran Rawat (supra)**, it is apparent that the Court has not held that couple residing in a live-in-relationship are not entitled to protection of the Court, but it is due to the special circumstances of that case before the Court, that the Court has denied protection to the couple staying in a live-in-relationship.

16. Having regard to the facts and circumstances of the case and the law laid down by the Apex Court in its catena of judgements, this Court is of the opinion that the petitioners are at liberty to live together and no person, including their parents or anyone acting on their behalf, shall be permitted to interfere in their peaceful live-in-relationship. In case any disturbance is

caused in the peaceful living of the petitioners, the petitioners shall approach the Superintendent of Police concerned, with a copy of this order, who shall provide immediate protection to the petitioners.

17. A liberty is granted to the private respondent that if false facts are stated or the documents brought on the record are fabricated or forged, it will be open to her to file an application in this petition.

18. With the aforesaid observations, the writ petition is **disposed of**.

Order Date :- 05.09.2023

Brijesh Maurya