2025:AHC:196882

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 36027 of 2025

Smt. Sonam And Another

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Imaran Ahmad
Counsel for Respondent(s)	:	C.S.C.

Court No. - 78

HON'BLE VIVEK KUMAR SINGH, J.

1. Supplementary affidavit filed today is taken on record.

2. Heard learned counsel for the petitioners and Sri Arvind Kumar Singh, learned Standing Counsel for the State respondents.

3. By means of the present writ petition, the petitioners have prayed for a writ in the nature of mandamus directing the respondents not to interfere in their peaceful life and also for a direction to provide protection.

4. It is contended by the learned counsel for the petitioners that both the petitioners are major and they are living together on their own free will, but the respondent no. 4 is causing hindrance in their peaceful life and it is prayed that the respondent- Police Authorities may be directed to restrain the responder no. 4 from interfering in the petitioners' life.

5. It is further submitted that the petitioner no. 1 moved an application to S.S.P., Saharanpur on 25.9.2025 wherein she stated that she is the wife of the respondent no. 4 and now she has started living with the petitioner no. 2 in a relationship and her husband/respondent no. 4 is threatening her with consequences. The application dated 25.9.2025 has been appended as annexure no. 3 to this petition.

6. The learned Standing Counsel, as per instructions, submits that this is the second marriage of the petitioner no. 1 Smt. Sonam and both the petitioners are living in a relationship for the last two years and they have no apprehension of life threat from respondent no. 4. No marriage certificate has been appended by the petitioners since the petitioner no. 1 is already married and no divorce decree has been passed by any competent court

having jurisdiction. Only divorce suit has been filed which is still pending and the petitioner no. 1 is still legally wedded wife of her earlier husband Rajat, however, the petitioner no. 1 may approach the Police Authorities, in case, any harassment or humiliation is caused by her earlier husband Rajat. Attention of the Court has been drawn towards Annexure No. 1 to the supplementary affidavit wherein it is mentioned that divorce petition has been filed by the petitioner no. 1 against her husband Rajat on 30.10.2025 i.e. after passing the order by this Court on 16.10.2025 whereby it was observed that the petitioner no. 1 was already married and no divorce had taken place between the petitioner no. 1 and her husband/respondent no. 4 and she was directed to file copy of the divorce petition.

7. I have heard rival submissions of both the parties.

8. In the case of **Asha Devi and Another vs. State of U.P. and Others passed in Writ (C) No.18743 of 2020**, the Hon'ble Division Bench of this Court formulated two questions as under:-

> *"(i) Whether the petitioners, who claim themselves to be living together as husband and wife; can be granted protection when the petitioner No.1 is legally wedded wife of someone else and has not taken divorce sofar ?*
>
> *(ii) Whether protection to petitioners as husband and wife or as live-in-relationship can be granted in exercise of powers conferred under Article 226 of the Constitution of India, when their living together may constitute offences under Sections 494/495 I.P.C. ?"*

9. In the judgment of Asha Devi (Supra), Hon'ble Division Bench of this Court has discussed the judgment of Hon'ble Apex Court in the case of "**D. Velusamy Vs. D. Patchaiammal, (2010) 10 SCC 469**", in which the Hon'ble Apex court held that:-

> *"32. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence.*
>
> *If a man has a `keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'."*
>
> (emphasis supplied)

10. In the judgment of Asha Devi (Supra), the Division Bench of this Court on the basis of various judgments of High Court held that following relationship are not recognized or approved as living in relationship:-

"(a) Concubine can not maintain relationship in the nature of marriage vide paras 57 & 59 of the judgment of Hon'ble Supreme Court in Indra Sarma Vs. V. K. V. Sarma (2013) 15 SCC 755.

(b) Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one's husband or wife, cannot be said to be a relationship in the nature of marriage vide para 58 of judgment in Indra Sarma's Case (supra) & A Subhash Babu Vs. state of A.P. (2011) 7 SCC 616 (paras 17 to 21, 27, 28 & 29). Polygamy is also a criminal offence under Section 494 & 495 I.P.C., vide Shayara Bano Vs. Union of India (2017) 9 SCC 1 (paras 299.3).

(c) Till a decree of divorce is passed the marriage subsist. Any other marriage during the subsistence of the first marriage would constitute an offence under Section 494 I.P.C. read with Section 17 of the Hindu Marriage Act, 1955 and the person, inspite of his conversion to some other religion would be liable to be prosecuted for the offence of bigamy, vide Lily Thomas and another Vs. Union of India and others (2000) 6 SCC 224 (Para 35). In para 38 of the aforesaid judgment, Hon'ble Supreme Court observed as under:-

> *"38. Religion is a matter of faith stemming from the depth of the heart and mind. Religion is a belief which binds the spiritual nature of man to a super-natural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense is a consecration and denotes an act of worship. Faith in the strict sense constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry. Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited. The institution of marriage under every personal law is a sacred institution. Under Hindu Law, Marriage is a sacrament. Both have to be preserved."*
>
> (emphasis supplied)

(d) If both the persons are otherwise not qualified to enter into a legal marriage including being unmarried, vide D Velusamy Vs. D Patchaiammal (supra) (para 31)."

11. In the judgment of Asha Devi (Supra), Hon'ble Division Bench of this Court has also discussed the judgment of Hon'ble Apex Court in the case of "**Director of Settlement, A.P. Vs. M.R. Apparao (2002) 4 SCC 638**, in which the Hon'ble Apex court has considered the High Court's power for issuance of mandamus and held as under:-

> *"17. ..... One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the Court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior Courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. ....."*

12. In the relationship of a marriage or a live-in relationship, there must be two consenting adults human beings. The concept of Gotra, Caste and Religion is left way back. No one has the right to interfere in the personal liberty of two adults, not even the parents of the two adults can interfere in their relationship, but, the Right to Freedom or Right to Personal Liberty is not an absolute or unfettered right, it is qualified by some restrictions also. The freedom of one person extincts where the statutory right of another person starts. A spouse has statutory right to enjoy the company of his or her counterpart and he/she cannot be deprived of that right for the sake of personal liberty and no such protection can be granted to infringe statutory right of the other spouse, hence, the freedom of one person cannot encroach or overweigh the legal right of another person. If the petitioners are already married and have their spouse alive, he/she cannot be legally permitted to enter into live-in relationship with a third person without seeking divorce from the earlier spouse. He/she first has to obtain the decree of divorce from the court of competent jurisdiction before solemnizing marriage entering into live-in in a relationship out of their legal marriage.

13. A Division Bench of this Court in **Writ-C No. 14443 of 2021, Smt. Aneeta vs. State of U.P. and others, decided on 29.7.2021**, has considered the similar matter where petitioner no. 1 Smt. Aneeta was in a relationship with petitioner no. 2 because of apathetic and torturous behaviour of respondent no. 4, her legally wedded husband, who barged into the house of petitioner no. 2 and petitioners sought a writ order or direction in the nature of mandamus commanding the respondent no. 2 to protect and enforce the fundamental right of the petitioners; life and personal liberty as guaranteed under Article 220 and 221 of the Constitution of India and ensure safety and protection of petitioners as well as to ensure no further hindrance is caused in their relationship, and the petitioners may not be harassed in any way by

the local police or by the respondent no. 4 or his associates in any manner whatsoever. This Court observed in Writ- C No. 11295 of 2021 (Premwati and another Vs. State of U.P and others) that we are not against granting protection to people who want to live together irrespective of the fact as to which community, caste or sex they belong to. If the respondent no. 4 barged into the house of petitioner no. 2, it is in the realm of criminal dispute for which she can move the criminal machinery available in the country. But no law abiding citizen who is already married under the Hindu Marriage Act can seek protection of this Court for illicit relationship, which is not within the purview of social fabric of this country. If she has any differences with her husband, she has to first get separated from her spouse as per the law applicable to the community. Live-in relationship cannot be granted at the cost of the social fabric of this country. Directing the police to grant protection to them may indirectly give our assent to such illicit relations.

14. While applying the principles laid down in various pronouncements by Hon'ble the Apex Court, it gives guidelines to the fact that couple must be of legal age to marry and qualified to enter into legal marriage including being unmarried and they must be akin to spouse for significant period of time. There is nothing on record primarily to show that they are living as husband-wife or they have solemnized marriage after obtaining divorce from the earlier marriage. Neither proof of joint account, financial security, joint property or joint expenditure is produced before this Court nor any document is produced before this Court to substantiate that the petitioners are akin to spouse.

15. According to own case of the petitioners, the petitioner no. 1 is still a legally wedded wife of one Rajat/respondent no. 4. As per own alleged application dated 25.9.2025, which is annexed as annexure-3 to this petition, the petitioners are living in a relationship and they have sought protection from interference in their living together. The petitioner no. 1 is already a married women being wife of one Rajat, the act of the petitioners particularly the petitioner no. 2, may constitute an offences under section 494/495 of IPC. Such a relationship does not fall within the phrase "live-in relationship" or "relationship in the nature of marriage ". The writ petition has been filed by the petitioners for protection from interference by others in their living as husband and wife. If the protection as prayed is granted, it may amount to grant protection against commission of offences under section 494/495 of IPC.

16. Article 226 of the Constitution of India empowers High Court to issue directions, orders or writs in the nature of habeas corpus, mandamus, prohibiton, quo warranto and certiorari or any of them. Such directions, orders or writs may be issued for the enforcement of fundamental rights or for any other purpose. The jurisdiction under Article 226 is equitable and discretionary.

17. Following relationship have not been recognized or approved as live-in relationship or relationship in the nature of marriage. This list is not exhaustive but merely illustrative :-

> *"(a) Concubine can not maintain relationship in the nature of marriage.*
>
> *(b) Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one's husband or wife, cannot be said to be a relationship in the nature of marriage. Polygamy is also a criminal offence under Sections 494 & 495 I.P.C.*
>
> *(c) Till a decree of divorce is passed the marriage subsist. Any other marriage during the subsistence of the first marriage would constitute an offence under Section 494 I.P.C. read with Section 17 of the Hindu Marriage Act, 1955 and the person, inspite of his conversion to some other religion would be liable to be prosecuted for the offence of bigamy.*
>
> *(d) If both the persons are otherwise not qualified to enter into a legal marriage including being unmarried."*

18. It is settled law that writ of mandamus can be issued if the petitioner has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. Similar view has also been taken by Hon'ble Supreme Court in **Kalyan Singh vs, State of U.P., AIR 1962 SC 1183** and Director of Settlement A.P. (supra). Applying the principles of issuance of writ of mandamus on the facts of the present case, this Court finds that the petitioners have no legal right for protection on the facts of the present case inasmuch as such the protection as being asked, may amount to protection against commission of offence under Section 494/495 I.P.C. It is well settled law that writ of mandamus can not be issued contrary to law or to defeat a statutory provision including penal provision. The petitioners do not have legally protected and judicially enforceable subsisting right to ask for mandamus.

19. Considering rival submissions of the learned counsel for the parties and the Judicial Authorities of this Court cited as above, this Court is not inclined to issue any writ, order or direction in the nature of mandamus for protection to the petitioners who are in live-in relationship without obtaining decree of divorce from the competent court as mentioned above. The petitioner no. 1 is legally wedded wife of respondent no. 4 and their marriage has not been dissolved by orders of any competent court, therefore, it would be deemed to be subsisting in the eye of law. In such a situation, protection to the petitioners who claim to be in live-in relationship, cannot be granted in exercise of powers conferred under Article 226 of the Constitution of India as well as in the light of judgment of **Asha Devi (supra)**.

20. Accordingly, petition stands **dismissed** with above observations.

November 7, 2025
A.P. Pandey

(Vivek Kumar Singh,J.)