

Court No. - 81

Case :- WRIT - C No. - 1067 of 2024

Petitioner :- [REDACTED]

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Vijay Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Mrs. Renu Agarwal,J.

1. Heard Sri Vijay Kumar Tiwari, learned counsel for the petitioners and Sri Yogesh Kumar, learned Standing Counsel for the State.

2. The present petition under Article 226 of the Constitution has been preferred by the petitioners with the following prayers:

" (i) Issue a writ order or direction in the nature of mandamus commending the respondents not to harass/torture/illegally arrest the petitioners or to interfere or create hindrance in the peaceful living of the petitioners as living husband and wife and to protect the life and liberty of the petitioners.

(ii) Issue a writ order or direction in the nature of mandamus as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(iii) Award the cost of the writ petition to the petitioners."

3. It is submitted by the learned counsel for the petitioners that both the petitioners have attained the age of majority. As per high school certificate-cum-marks sheet the date of birth of petitioner No.1-[REDACTED] is 25.12.1999 and she is aged about more than 24 years and as per pan card the date of birth of the petitioner No.2-[REDACTED] is 04.03.2000 and he is aged about more than 23 years. It is submitted that both the petitioners are major and they developed love affair and solemnized their marriage on 01.01.2024, as per Rituals of Arya Samaj. Copy of marriage certificate issued by Arya Samaj is annexed as annexure

no.5 to the petition. They have applied on-line for registration of their marriage before the competent authority, which is pending. Copy of on-line application for registration of marriage is annexed as annexure no.6 to the petition. Learned counsel for the petitioners has averred in the writ petition that they are living as wife and husband and their relationship is not relished and agreed by private respondent no.4 and he is interfering in their marital life. The petitioners apprehend danger to the life and liberty from respondent No.4, therefore, the indulgence of this Court is sought. Petitioner No.1 has also moved an application before the Senior Superintendent of Police, Varanasi on 17.01.2024 by registered post, seeking protection for herself and petitioner No.2 from respondent No.4, but no action has been taken by police authorities in the matter. Copy of application dated 17.01.2024 is annexed as annexure no.1 to the supplementary affidavit dated 29.01.2024. Therefore, present petition moved by the petitioners for issuance of mandamus against respondent no.4.

4. On the other hand, learned Standing Counsel submitted that both the petitioners are different religion and either of the parties have not applied for conversion of their religion, as per sections 8 & 9 of Conversion Act. The Muslim women cannot solemnized her marriage with Hindu man as per the rituals of Arya Samaj, in Hindu Marriage Act. Hence opposed the prayer of petition.

5. I have heard the rival submissions of learned counsel for the parties and perused the record.

6. From the perusal of record it transpires that both the petitioners have attained the age of majority. As per high school certificate-cum-marks sheet the date of birth of petitioner No.1-

is 25.12.1999 and she is aged about more than

24 years and as per pan card the date of birth of the petitioner No.2-XXXXXXXXXX is 04.03.2000 and he is aged about more than 23 years. Both the petitioners are major and they developed love affair and solemnized their marriage on 01.01.2024, as per Rituals of Arya Samaj. They have applied on-line for registration of their marriage before the competent authority, which is pending.

8. Reliance has been placed on the judgment passed by Co-ordinate Bench of this Court in case of ***Razia and Anr. Vs. State of U.P. and Ors.*** passed in ***Writ-C No. 27338 of 2023***, in which Co-ordinate Bench of this Court relying upon various judgment granted protection to the couple living in live-in-relationship. Learned counsel for the petitioners submitted that in this case also one of the party is muslim by faith and in the identical situation, the court has granted protection. Opposing the arguments advanced by learned counsel for the petitioners, learned Chief Standing Counsel appearing on behalf of the State relied upon the case law passed by Division Bench in case of ***Kiran Rawat and Anr. Vs. State of U.P.*** passed in ***Criminal Misc. Writ Petition No. 3310 of 2023***. From the perusal of both the cases, it is apparent that the judgment of ***Kiran Rawat (supra)*** is mentioned by the Single Bench decision of this Court in case of ***Razia (supra)*** but the ruling is not discussed on merits in that case nor the ruling is distinguished on facts, hence, the ruling has no application on the present case. Reliance has also been placed by petitioners upon the judgement of the Apex Court in ***Lata Singh Vs. State of Uttar Pradesh and Anr.*** reported in ***(2006) 5 SCC 475***, whereby Hon'ble 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 are not harassed by any one nor subjected to threats or acts of violence, and any one 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. 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."

9. In *Shafin Jahan Vs. Asokan K.M. and Ors.* reported in (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. Hon'ble the Apex Court held as under :-

"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/he 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"

10. Both these cases guarantee the fundamental right of choice of an adult person while marrying with inter-faith persons. The said freedom is both a constitutional and human right and no-one is

allowed to deprive all such freedom from any human being.

11. In the case of *D.Velusamy Vs. D. Patchajammal* reported in **(2010) 10 SCC 469**, Hon'ble Apex Court while considering the definitions given under Section 2 of the Domestic Violence Act dealt with the definition of "domestic relationship", as a relationship in the nature of marriage. It laid down the following requisite criteria in the 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."

12. 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. ?"

13. 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**", 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)

14. 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 live-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**.*

*(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.4 (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** 5 (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**6 (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)."*

15. 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**, 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."

16. In the relationship of marriage or in the nature of live-in-relationship there must be two consenting adults human beings. The concept of Gotra, Caste and Religion is left a way back. No one has right to interfere in the personal liberty of two adults, not even the parents to 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, hence, the freedom of one person cannot encroach or outweigh the legal right of another person. If the petitioners are already married and had their spouse alive, he/she cannot be permitted to enter into live-in-relationship with 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 or entering into live-in-relationship out of their legal marriage.

17. It is pertinent to mention here that The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (in brevity 'the Act') has come into force on 05.03.2021, thereafter it is made mandatory for interfaith couples to seek conversion according to the provisions of the Act. In the case at hand, admittedly, none of the petitioners has moved application for

conversion of religion in accordance with Section 8 and 9 of the Act. Explanation to Section 3(1) of the Act reads as follows:-

"3(1) No person shall convert or attempt to convert, either directly or otherwise, any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means. No person shall abet, convince or conspire such conversion.

Explanation:- For the purposes of this sub-section conversion by solemnization of marriage or relationship in the nature of marriage on account of factors enumerated in this sub-section shall be deemed included."

18. Explanation goes to show that conversion is not only required for the purpose of marriage, but it is also required in all relationship in the nature of marriage, therefore, Conversion Act applies to relationship in the nature of marriage or live-in-relationship. Petitioners have not yet applied for conversion as per provisions of Section 8 and 9 of the Act, hence, the relationship of petitioners cannot be protected in contraventions of the provisions of law.

19. Certainly, the Courts have power to interpret the provisions of law if there is ambiguity in the provisions of law, but, the above mentioned law is explicit which mandates that conversion is required not only in cases of inter-caste marriages but relationship in the nature of marriage, hence, Courts should refrain from embarking upon the interpretation of law in any sense when the law is very explicit.

20. 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. No proof of joint account, financial security, joint property or joint expenditure is produced before this Court. Petitioners have not applied for conversion so far. Till date, no F.I.R. has been lodged by the parents of any of the petitioner, therefore, there is no challenge to the relationship of petitioners.

21. In view of the discussions as above, it is not considered desirable that relationship of the petitioners be protected in contravention of the statutory provisions of law passed by legislature, hence, petition has no force and is liable to be dismissed and is **dismissed** accordingly.

(Renu Agarwal,J.)

Order Date :- 5.3.2024
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