

Court No. - 1

Case :- CRIMINAL MISC. WRIT PETITION No. - 3056 of 2024

Petitioner :- Sneha Devi And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Lko. And Others

Counsel for Petitioner :- Dhananjai Kumar Tripathi, Devendra Verma, Kajol, Tanupriya

Counsel for Respondent :- G.A., Suyash Kumar Pandey

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Ajai Kumar Srivastava-I, J.

1. Heard Sri Dhananjai Kumar Tripathi, learned counsel for the petitioner, Sri S.P. Singh, learned A.G.A. for the State and Sri Suyash Kumar Pandey, learned counsel for the complainant.

2. Peculiar is the case before us where a successive writ petition has come to be filed by three petitioners having joined each other. The contents of the writ petition are sworn by petitioner No.1, Sneha Devi. The earlier writ petition bearing Criminal Misc. Writ Petition No.2943 of 2024 was filed by two petitioners i.e. petitioners No.1 and 2 in the present case. The previous writ petition, which was taken up on **25.04.2024**, was consigned to record in terms of the following order :-

"Vakalatnama filed today by Sri Suyash Kumar Pandey, Advocate on behalf of opposite party No.4, is taken on record.

"This petition has been filed with a prayer to issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to interfere in the peaceful living of the petitioners and also protect the lives and liberty⁸ of the petitioners as such they are in live-in-relationship with each other with their own sweet will."

Learned counsel for the petitioners prays to withdraw the present writ petition with liberty to file a fresh petition as FIR is already registered in the case.

With the aforesaid liberty, the writ petition is consigned to record as withdrawn."

3. The disposal of previous writ petition was pointed out to us and it is for this reason that the record of previous Criminal Misc. Writ Petition No.2943 of 2024 was also called for. On a comparative study of the two writ petitions, we gather that in paragraph No.11 of the earlier writ petition, the following statement was made by the petitioners :-

"11. That the marriage of petitioner no.2 was solemnized with one Farida Khatoon in the year 2020 and with the wedlock of both of them, one girl was also born whose name is Shadia and the first wife of petitioner no.2 is suffering from ailments due to which she has no objection with live-in-relationship of both petitioners and the petitioner no.1 unmarried and prior to this, she never married to anyone and she not lived as couple/wife with anyone."

4. In the successive writ petition filed by the petitioners, two of whom, i.e., petitioners No.1 and 2 had previously filed the earlier writ petition, in paragraph No.15 have stated as under :-

"15. That it is pertinent to mention here that the marriage of petitioner No.2 was solemnized with one Farida Khatoon in the year-2020 and with the wedlock of both of them, one girl was also born whose name is Shadia and prior to six months triple talaq has been given by the petitioner no. 2 to his wife namely Farida Khatoon and there is no matrimonial with his first wife."

5. The two versions stated in the two writ petitions are verified by one and the same counsel, Sri Dhananjai Kumar Tripathi, Advocate. When the case was taken up on 29.04.2024, in the fitness of things, this Court

passed the following order :-

"The concerned police station is hereby directed to produce Farida Khatoon, resident of Village Narhariya, Police Station Khargupur, District Gonda, who is legally wedded wife of the petitioner no.2, Mohd. Shadab Khan, alias Lalai, before this Court tomorrow to ascertain some relevant facts.

Petitioner no.1 and Petitioner No.2 shall also be present in person before this Court tomorrow.

List/put up along with the record of Criminal Misc. Writ Petition No.2943 of 2024 tomorrow i.e. on 30.04.2024.

We also notice that paragraph no.15 of the instant writ petition and paragraph no.11 of writ petition no. 2943 of 2024 stand in conflict and there appears to be concealment of material facts and perjury.

Learned A.G.A. to communicate this order to the S.S.P/S.P./S.H.O. concerned for compliance."

6. Learned A.G.A, on the basis of instructions received, has placed before us a communication dated 30.04.2024 addressed to him and the same being alarming, even if a privileged communication between the client and his counsel for it having a bearing upon the present proceedings, is taken on record.

7. This Court at the time of passing the order on 29.04.2024 was orally informed by petitioner No.2 that his legally wedded wife was presently residing at Gonda but this fact has also come out to be untrue. The communication dated 30.04.2024 which is taken on record reveals some relevant facts regarding the whereabouts of the legitimate wife of petitioner No.2, who seems to be residing with her in laws at Bombay. It is also informed that petitioner No.2 out of the wedlock with Smt. Farida Khatoon has a female child, who is five

years of age.

8. The present writ petition prays for the following reliefs :-

"[I] Issue a writ, order or direction in the nature of Certiorari thereby quash the impugned First Information Report dated 24.04.2024 lodged by the opposite party no. 4 in F.I.R./ Case Crime No.0126/2024, Under Section-366 I.P.C. at Police Station-Visheshwarganj, District-Bahraich, as contained in Annexure No. 1 to the writ petition.

[II] Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to arrest the petitioner No. 2 & 3 in pursuance of the impugned First Information Report dated 24.04.2024 lodged by the opposite party no. 4 in F.I.R./ Crime No. 0126/2024, Under Section-366 I.P.C. at Police Station-Visheshwarganj, District-Bahraich, contained in Annexure No. 1 to the writ petition, in the interest of justice.

[III] Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to interfere in the peaceful living of the petitioners no. 1 and 2 and also protect the lives and liberty of the petitioners as such they are in live-in-relationship with each other with their own sweet will, in the interest of justice."

9. The writ petition virtually seeks legitimization of live-in-relationship between petitioner No.1 and petitioner No.2. This relief is sought in a situation where petitioner No.2 belonging to a different religion is already married and has a minor child of five years of age. The religious tenets to which the petitioner No.2 belongs to, does not permit live-in-relationship during the subsisting marriage. The position may be different, if the two persons are unmarried and the parties being major choose to lead their lives in a way of their own. The constitutional morality in that situation may come to

the rescue of such a couple and the social morality settled through the customs and usages over ages may give way to the constitutional morality and protection under Article 21 of the Constitution of India may step in to protect the cause. The case before us is, however, different. Article 13(3) of the Constitution of India defines the law as under :-

"(3) In this article, unless the context otherwise requires,—

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

10. The customs and usages are an equal source of law recognized by the Constitution as the law made by the competent Legislature. Once there is a recognition of the customs and usages as a valid law within the framework of our Constitution, even such laws become enforceable in an appropriate case. The marital behaviour of the citizens in our society is regulated under statutory laws and personal laws, therefore, the usages and customs, are bound to be attached equal significance and no less than the laws made by the Parliament or the State Legislature. A person reposing faith in Islam cannot claim any rights in the nature of a live-in-relationship, particularly when he has a living spouse. The constitutional protection under Article 21 of the Constitution of Indian would not lend an uncanalized support to such a right, once the usages and

customs prohibit such a relationship between the two individuals of the above description. No wonder, challenge to the F.I.R. in the present case for an offence under Section 366 I.P.C. may fail due to the reason that the petitioner No.1, who is major, has stated amply in the writ petition that she has started living with petitioner No.2 out of her free will, but any further continuance of live-in-relationship as prayed for in the writ petition seeking a writ of mandamus cannot be granted looking to the rights of the legitimate wife of petitioner No.2 and looking to the interest of minor, who is born out of a legitimate wedlock.

11. Thus, the direction for continuation of a live-in-relationship as has been prayed for in the present writ petition, the Court would strongly deprecate and deny notwithstanding the fact that the constitutional protection remains available to a citizen of India. The constitutional morality and social morality in the matter of marriage institution requires to be balanced failing which social coherence for achieving the object of peace and tranquility in the society would fade and disappear.

12. Having denied the relief of mandamus as prayed for hereinabove, we direct the investigating officer to escort the petitioner No.1, Sneha Devi, safely to her parental home and submit a report to this Court of her being handed over to her parents.

13. The Court shall next go into the question of concealment of material facts and we find that the counsel appearing in the two cases has risked at his

own cost to abuse the process of law.

14. To deal with such an issue, let the matter be listed before this Court on 08.05.2024.

(A.K. Srivastava-I, J.) (A.R. Masoodi, J.)

Order Date :- 30.4.2024

cks/-