

Court No. - 4

Case :- WRIT - C No. - 43526 of 2023

Petitioner :- Nagma Bano And Another

Respondent :- State Of U.P. And 9 Others

Counsel for Petitioner :- Arun Kumar Pandey, Pramod Kumar Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Saral Srivastava, J.

1. Heard learned counsel for the petitioners, Sri Pramit Kumar Pal, learned Standing Counsel for the State respondents and Sri Anil Kumar, Advocate, bearing Advocate Roll No.A/A0755/12 for the private respondents no.8 & 10.

2. By means of the present writ petition, the petitioners have prayed for the following relief:-

"i. Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents not to interfere in the peaceful living of the petitioners in live-in-relationship.

ii Issue a writ, order of direction in the nature of mandamus restraining the respondents from interfering in peaceful life of the petitioners living in live-in-relationship.

iii. Issue an interim mandamus protecting the petitioners and permitting them to live in relationship.

iv. Issue any other writ, order or direction in the nature of which this Hon'ble Court may deem fit and proper in the circumstances of the case.

v. Award Cost of the writ petition in favour of the petitioners."

3. The petitioner no.1 follows the Islamic religion, whereas petitioner no.2 is Hindu by religion. The petitioner no.1 was earlier married with one Dilshad in the year 1995 and out of their

wedlock a son was born, but unfortunately, husband of petitioner no.1, namely, Dilshad expired. According to the petitioners, after the death of husband of petitioner no.1, she was forced to marry with one Azad i.e. respondent no.10 by her parents, and the Nikahnama on 16.10.2023 was also executed. However, petitioner no.1 denies that she has ever accepted the Nikahnama. Now, the petitioner no.1 has started living with petitioner no.2-Ashish Kumar, and in such view of the fact, the petitioners are paying the relief quoted above.

4. Learned counsel for the petitioners has contended that the petitioner no.1 denies the Nikahnama and therefore, her marriage with respondent no.10 is void. It is further contended that petitioner no.1 has personal liberty as enshrined under Article 21 of the Constitution of India to live with any one of her choice, and the petitioner no.1 out of her free will is staying with petitioner no.2, therefore, the petitioners are entitled to police protection as nobody including her parents have right to interfere with the peaceful living of petitioner no.1 with petitioner no.2. It is submitted that any hindrance or threat to the petitioners' peaceful living by anyone of the society including her parents and relatives amounts infringement of her fundamental rights as enshrined under Article 21 of the Constitution of India, and therefore, it is the duty of the State to protect their rights. Since, the respondents have failed to discharge their obligation under law to provide protection to the petitioners, therefore, the petitioners are entitled to the relief prayed for in the writ petition. In support of his contention, learned counsel for the petitioners has placed reliance upon the judgement of this Court passed in *Writ-C No.27338 of 2023, Razia and Another Vs. State of U.P. and 3 Others* and the judgement of the Apex Court passed in **Special Leave to Appeal (Crl.) No (s).**

4028 of 2021, Gurwinder Singh and Anr. Vs. The State of Punjab and Ors.

5. Learned counsel for respondent nos.8 & 10 submits that the marriage of petitioner no.1 has been solemnized with respondent no.10-Azad on 16.10.2023, and the petitioner no.1 accepted the Nikah, and consequently the Nikahnama was executed. Accordingly, it is submitted that as the marriage of petitioner no.1 with respondent no.10 is subsisting and has not been dissolved in accordance with law, therefore, the relief prayed for by the petitioners in the writ petition is misconceived and cannot be granted by this Court in exercise of power under Article 226 of the Constitution of India.

6. Be that as it may, it is no doubt true that once the petitioners have attained majority, they are entitled to live with anybody of their choice out of their free will and desire, and this right has been guaranteed to the petitioners by Article 21 of the Constitution of India, but this Court may note that the right guaranteed under Article 21 of the Constitution of India may not be stretched to such an extent as to convert the society governed by the rule of law to a society where the rule, social norms, moral ethics and customs governing the society are kept at bay.

7. To live in a society in a peaceful manner and in accordance with custom and tradition, social values, every individual is under obligation to follow the norms which are ethical, moral and uplifts the morality of the society. These norms cannot be disregarded or ignored on the ground of protection of personal liberty to every individual under Article 21 of the Constitution of India. In a society governed by rule of law, marriage is supposed to be a sacred institution and so long as the marriage is subsisting, it is not

expected from any individual to leave his partner and start living with somebody else, as that will not only devalue the morals of the society, but will also spoil future generation of the country inasmuch as such examples would set unethical and immoral precedents to our future generation.

8. The present case is one such case where though the petitioner no.1 denies marriage with respondent no.10 on the ground that she has not accepted the Nikahnama, but the fact remains that the marriage was solemnized. The marriage may be illegal, but that issue may be determined by a Court of law. Merely, because petitioner no.1 denies that she had not accepted the Nikahnama does not prove the marriage to be illegal when it is not disputed that the petitioner no.1 was present and participated in the Nikahnama. She only disputes the fact that she has not accepted the Nikahnama.

9. Article 226 of the Constitution of India has been engrafted to protect the fundamental rights and legal rights of persons in accordance with law who are living in a rule of society. In the present case, till date the marriage of the petitioner no.1 with respondent no.10 is not declared illegal or dissolved as per law, no civilised society can accept the living of married partner with a third person, and the Court under law in such condition is not obliged to come to rescue of such person who is living in a society not as per the norms, ethics and values of the society.

10. The judgement relied upon by the learned counsel for the petitioners in the case of *Razia & others (supra)* is not applicable in the facts of the present case for the reason that in the said case the petitioners were not married and they started living out of their

own will. The another judgement relied upon by the learned counsel for the petitioners of the Apex Court in the **Gurwinder Singh and Anr. (supra)** is of no help to the petitioners as the said judgement does not disclose under what factual circumstances, the Apex Court has granted the relief.

11. For the reasons given above, the writ petition lacks merits and is **dismissed** with a cost of Rs.10,000/- with shall be deposited by the petitioners with the High Court Legal Services Committee within a period of one month from today.

Order Date :- 16.1.2024

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