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107 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

[redacted]

[redacted]

.....PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Kulwinder Singh Lakhanpal, Advocate
for the petitioners.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a direction to respondents No.1 to 3 to protect the life and liberty of the petitioners at hands of respondents No.4 to 9.

2. The factual matrix of the present case unfolds as under:-

That petitioner No.1 aged 30 years and petitioner No.2 aged 32 years are living together despite of the fact that petitioner No.1 is already married and is having two children out of the wedlock. Both the petitioners developed liking for each other and wants to live in live-in-relationship but respondents are extending threats to their life and liberty.

3. Considering the aforesaid submissions, this court is of the view that India is recognized for its democratic administration and domestic framework. People, on the whole, have a strong attachment to their houses,

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perceiving that a human has a marriage is the most important cognitive process. In our diverse country, marriage as social tie is one the essential of Indian society. Regardless of conviction, individuals regard union as a fundamental advancement in their lives, and they agree that moral values and customs must be preserved for a stable community. India is a country with a diverse set of principles traditions, rituals, and beliefs that serve as essential legal sources. Marriage is a holy relationship with legal consequences and great social esteem. Our country, with its deep cultural origins, places a significant emphasis on morals and ethical reasoning. However, as time has passed, we have begun to adopt Western culture, which is vastly different from Indian culture. A portion of India appears to have adopted Modern lifestyle, namely, the live- in relationship.

4. With regard to the status of live-in-relationship with an existing marriage, the Hon'ble Apex Court in the case of ***Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755***, has held that all live-in-relationships could not be considered synonyms to the relationships in the *"nature of marriage"*. A live-in-relationship between a married man and a woman or a married woman with a man is not akin to marriage, as it amounts to adultery and bigamy, which is unlawful. Therefore, such woman are not entitled to any protection under the DV Act. Furthermore, certain guidelines were framed by the Apex Court in the aforesaid judgment to consider the live-in-relationships in the nature of marriage wherein the following observations were made:-

> *"We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression "relationship in the nature of marriage" under Section 2(f) of the DV Act. The*

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guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.

56.1 Duration of period of relationship- Section 2(f) of the DV Act has used the expression "at any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

56.2 Shared household- The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

56.3 Pooling of Resources and Financial Arrangements Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

56.4 Domestic Arrangements-Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

56.5 Sexual Relationship- Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

56.6 Children- Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

56.7 Socialization in Public- Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

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> *56.8 Intention and conduct of the parties. Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship."*

5. Therefore, this court is of the view that the petitioners being fully aware of the fact that one of them being married earlier could not have entered into a live-in relationship. Further the petitioner No. 1 has not taken divorce from her earlier marriage. All live-in-relationships are not relationships in the nature of marriage. Petitioners relationships, therefore, not a relationship in the nature of marriage because it has no inherent or essential characteristic of a marriage, but a relationship other than in the nature of marriage and the petitioner no. 1 status is lower than the status of a wife and that relationship would not fall within the definition of domestic relationship under [Section 2(f) of the DV Act. If this Court holds that the relationship between the petitioner no.1 and petitioner no. 2 is a relationship in the nature of a marriage, we will be doing an injustice to the wife and children who opposed that relationship.

6. Entering into marriage therefore is to enter into a relationship that has public significance as well. The institutions of marriage and the family are important social institutions that provide for the security and bear an important role in the rearing of children The celebration of a marriage gives rise to moral and legal obligation, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born out of the wedlock.

7. Under Article 21 of the Indian Constitution each and every individual has a right to live with peace, dignity and honour, therefore, by allowing such type of petitions we are encouraging the wrongdoers and

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somewhere promoting the practice of bigamy which is otherwise an offence under Section 494 IPC, further violating the right of the other spouse and children under Article 21 to live with dignity. Moreover, every person has a right to have his reputation preserved. It is a jus in rem, a right good against all in the world. Article 21 of the Constitution of India places Fundamental Rights on a much higher pedestal. It must be preserved since it is sacred under the Constitutional Scheme. The concept of right to life and personal liberty guaranteed under Article 21 of the Constitution of India includes the right to live with dignity and the petitioners by running away from their parental home is not only bringing bad name to the family but also is violating the right of the parents to live with dignity and honour. Further dependence can be made upon the Apex Court judgment in "***National Legal Services Authority vs. Union of India", (2014) 5 SCC 438***, wherein it has been held as under:-

> *"106. The basic principle of the dignity and freedom of the individual is common to all nations, particularly those having democratic set-up. Democracy requires us to respect and develop the free spirit of human being which is responsible for all progress in human history. Democracy is also a method by which we attempt to raise the living standard of the people and to give opportunities to every person to develop his/her personality. It is founded on peaceful co-existence and cooperative living. If democracy is based on the recognition of the individuality and dignity of man, as a fortiori we have to recognise the right of a human being to choose his sex/gender identity which is integral in his/her personality and is one of the most basic aspect of self-determination, dignity and freedom. In fact, there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity."*

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8. The pre-requisites for a live-in-relationship as held by the Apex Court in ***"D.Velusamy vs. D. Patchaiammal" (2010) 10 SCC 469*** is that the couple must hold themselves out to society as being akin to spouses and must be of legal age to marry or qualified to enter into a legal marriage, including being unmarried.

9. Further the same view of this Court has been reiterated by various other Benches wherein the Court has refused to grant the protection to the couples living in live-in-relationship on the ground that if such protection as claimed, is granted the entire social fabric of the society would get disturbed. Reference regarding this can be placed upon ***Simranjeet Kaur and another v State of Haryana and others(2021)***, wherein the Court refused protection to couples in living relationship as one of the petitioners was married and had not obtained a legal divorce from the respondent. It was held that the petitioners entered into an unholy alliance and there is no valid and convincing material in the writ petition for exercising the extra-ordinary writ jurisdiction.

10. Another observation was made by a Single-Judge Bench of this Court in ***Kavita and another v State of Haryana and others (2021)*** wherein both the petitioners were married to the respective respondents and without seeking divorce from their respective spouses they were living in a lustful and adulterous life with each other and relied upon a vague document i.e., representation wherein it was nowhere stated that from whom they were apprehending threat to their life and liberty. While dismissing the petition, the Court remarked that it cannot be presumed that both the petitioners have any apprehension from their spouses and this petition has been filed just to

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obtain a seal of this Court on their so-called live-in relationship. In view of this, dismissing their plea, the Court noted thus:

> *" It is worth noticing here that in the absence of any allegation by not naming anyone in the representation, it cannot be presumed that both the petitioners have any apprehension from their own spouses and this petition has been filed just to obtain a seal of this Court on their so-called live-in relationship."*

11. The Allahabad High Court has also penned down its thoughts in ***Smt. Aneeta and Another v State of U.P. and Others, WP(C) No.14443 of 2021*** stating that the Court is 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. But none law abiding citizen who is already married under the Hindu Marriage Act, 1955, can seek protection of this Court for illicit relationship, which is not within the purview of social fabric. The sanctity of marriage pre-supposes divorce. If the petitioner has any difference with her husband, then she has to move for getting separated from her spouse as per law applicable to the community if Hindu Law does not apply to her. The Court held that it does not permit the parties to such illegality as tomorrow petitioners may convey that we have sanctified their illicit relations. Live-in relationship cannot be at the cost of social fabric of this Country. Directing the police to grant protection to them may be indirectly give our assent to such illicit relations.

12. In view of the above discussions and reading of the above clearly indicates that to attach legitimate sanctity to such a relation, certain conditions are required to be fulfilled by such partners. Merely because the two persons are living together for few days, their claim of live-in-relationship based upon bald averment may not be enough to hold that they

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are truly in live-in-relationship and directing the police to grant protection to them may indirectly give our assent to such illicit relationship, and, therefore, the orders cannot be passed under Article 21 of the Constitution of India which guarantees freedom of life to all citizens, but such freedom has to be within the ambit of law.

13. Resultantly, this Court does not find it to be a fit case for exercise of extra ordinary writ jurisdiction. Hence, the same is dismissed.

14. However, if the petitioners move an application/representation to the police authorities showing that they have genuine grievance or threat to their lives and liberty, the police authority may do the needful after verification of all the facts, as narrated by them in their representation.

(SANDEEP MOUDGIL)
JUDGE

16.12.2024
Anuradha/Sham

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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