

Court No. - 44

Case :- WRIT - C No. - 29138 of 2021

Petitioner :- Smt. Sunita Devi And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shyam Shankar Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Dr. Kaushal Jayendra Thaker,J.

Hon'ble Ajai Tyagi,J.

1. Heard Sri Shyam Shankar Mishra, learned counsel for the petitioner and learned Standing Counsel for the State.
2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioners seeking protection of their lives and liberties as they are major and by way of this writ petition, the petitioners has prayed for following reliefs :

"A. Issue a writ order or direction in the nature of Mandamus commanding and directing the respondents not to harass or take any coercive action in any manner against the petitioners and also not to interfere in the peaceful living of the petitioners as husband and wife.

B. Issue a writ order or direction in the nature of Mandamus Commanding and directing the respondent No.3 not to harass and interfere in peaceful life of the petitioners.

C. Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case to meet the ends of justice.

D. Award the cost to the petitioners."

3. Facts and chronology of events show that the petitioner No.1, Smt. Sunita Devi, was married with respondent No.3, Ranveer Singh as per her own version in Annexure No.1 on 6.5.2010 and there are children born out of the said wedlock. Her husband is serving in poultry form. It is her version that she was being harassed as he had come into contact with bad elements and used to come home only at midnight. When she complained to her parents, they scolded him, thereafter, the situation was pacified for some months but, again he started doing the same. On 7.9.2021, he came with his friends and

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wanted her to have illicit relations with his friends which she refused and at night, when her husband and children were sleeping, she left the matrimonial home. This all has been stated in the complaint dated 1.9.2021 written to Superintendent of Police, Etawah.

4. We are unable to reconcile as to how incident of 7.9.2021 can be narrated in a complaint dated 1.9.2021. There was no mention whether the same was posted to the police authority or not. Be that as it may, immediately thereafter, on 22.10.2021, this writ petition was filed.

5. Till September, 2021 she was with respondent No.3 and daughters. Since when petitioner No.1 and Petitioner No.2 are living as husband and wife is not disclosed. When did the husband, respondent No.3, threatened their relation is also not disclosed. Similar situation arose before the Punjab and Haryana High Court in the case of **Himani and another vs. State of Haryana, CRWP-11197-2021 (O&M)** decided on 26.11.2021 where the length of live-in-relationship was not even mentioned. In our case also, there is no indication as to when the petitioners started living together. Petitioner No.1 wants to live with petitioner No.2 without taking proper divorce and/or she does not even want to have marital relationship with respondent No.3 and no reasons have been assigned for such a drastic step.

6. Learned counsel for the petitioner has relied on the decision in **Indra Sarma vs. V.K. Sarma, AIR 2014 SC 309**. The judgment cited by the petitioner is about believing of relationship where there is domestic violence perpetrated and defence is taken that there was no marriage.

7. The decision in **Indra Sarma (Supra)** has been pressed into service, more particularly paragraph 23, which reads as under :

"23. Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the 'Consortium Omnis Vitae" which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship."

8. The above paragraph will not apply to the facts of this case, reason being, the marriage and family are social institution of vital importance. Paragraph 24 of the said decision reads as follows:

"24. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the [Special Marriage Act](#). Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in *Dawood and Another v. Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) noted as follows:

"Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. 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, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends...." "

9. In the light of the aforesaid, it cannot be said that the relationship outside the matrimony has also to be recognized under

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Indian law. Paragraph 52 of the said judgment categorically mentions that Live-in relation as such is a relation which has not been socially accepted in India unlike many other Countries.

10. Thus, saying that India is governed by Constitution of India and we are not living in primitive days makes no difference as in the present case it cannot be said that petitioners are living as husband and wife and it is evident from the record and submission of learned counsel for the petitioner that the marriage of petitioner No.1, Sunita Devi, with respondent No.3, Ranveer Singh, has not yet been dissolved. Moreover, there is nothing on record to show as to when the respondent No.3 threatened her while being in live-in-relation as till September, 2021 she says that she was with her husband and children.

11. We have occasion to deal with grant of protection to two persons of the same gender. Constitution of India may permit live-in-relation but, this writ petition is nothing else but filed with a purpose of obtaining seal of this Court on their illegal relationship.

12. However, recently the Division Bench of this Court in Writ C No.19795 of 2021 (**Shayara Khatun@ Shaira Khatun and another vs. State of U.P. and others**) decided on 26.10.2021 has held as under:

"In such view of the matter, we are of the opinion that police authorities are obligated to protect the rights of the petitioners.

In the event, the petitioners approach the police authorities complaining of any threat to their life and liberty, we hope and trust that the police authorities shall perform their duties as expected from them under law."

13. Constitutional mandate will not permit us to pass orders which cannot be passed in a writ petition under Article 226 of the Constitution. We have determined whether there is any act, omission or conduct of the respondent which would permit us to issue direction of no coercive action or granting protection. List of dates and events

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goes to show that the petitioner No.1 has come with an incorrect facts deliberately as her complaint has not culminated into F.I.R. being lodged. We are not even made aware whether the said complaint was posted or not, reason being, this writ petition has been filed immediately namely on 22/23.10.2021 and then there is no prolonged cohabitation of live in relation as contended in the ground of petition as according to her, she left matrimonial home leaving behind her husband and children on 07.9.2021. This is a gray area which police will have to investigation. The domestic relationship as defined by the Apex Court in the case of **Indra Sarma (Supra)** will not apply to the facts of this case.

14. Paragraph 65 of the said decision also goes contrary to the contention raised by the petitioner. However, we believe that even a person alleged of commission of any offence, if is threatened with dire consequences of life, he/she can pray for protection under Article 21 of the Constitution of India.

15. The factual scenario will not permit us to grant prayer 'A' as it would be against the very tenets of marital life of people. The personal autonomy rather than notion of social morality can be looked into but not at the stage when there is less period of cohabitation. There is no threat perception and no such complaint has been made to the police authority. Reference can also be had to the Division Bench of this Court penned by one of us (Dr. Kaushal Jayendra Thaker) in Writ C No. 14443 of 2021 (**Smt. Aneeta and another vs. State of U.P. and others**) decided on 29.7.2021.

16. In the present case, nothing is demonstrated that the husband, respondent No.3, has even remotely threatened this relationship. The threatening, if any, can be culled out is, of the incident narrated in the complaint dated 1.9.2021. The police would investigate this if at all

there is semblance of truth in accordance with law.

17. In view of the above, this writ petition is dismissed with cost of Rs.5,000/- because there is no threat perception as prayed by petitioners from respondent No.3. The Constitution of India does not permit us to issue mandamus when there is no threat perception alleged or transpired.

18. However, if the petitioner No.1 moves the Police authorities showing that she has genuine grievances or threat to her life, the police authority may do the needful after verification of all facts as narrated by her in the complaint made in September, 2021 to Superintendent of Police, Etawah.

Order Date :- 18.7.2022

DKS