

Court No. - 50

Case :- WRIT - C No. - 19351 of 2023

Petitioner :- Smt Priya Sunil Chauhan And Another

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

Counsel for Petitioner :- Nabi Ullah

Counsel for Respondent :- C.S.C.,Rajesh Dwivedi

Hon'ble Ram Manohar Narayan Mishra,J.

Instant writ petition has been filed by the petitioners with following prayers:-

"(i) Issue a writ, order or direction in the nature of mandamus directing the respondents not to harass & humiliate the petitioners as the petitioner No.1 and 2 are leading matrimonial life and performing their duties towards each other, otherwise the petitioners shall suffer irreparable loss and injury

(ii) Issue any other writ, order or direction, which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

Heard learned counsel for the petitioners, Sri Rajesh Dwivedi, learned counsel for the respondent Nos.4 to 10, Sri Hasan Abbas, learned Standing Counsel for the State and perused the material placed on record.

Petitioner No.1 Smt. Priya Sunil Chauhan is present before the court alongwith her male child. She volunteered to make statement before the Court to the effect that she solemnized her marriage with petitioner No.2 out of her free will and choice at the age of 18 years. Ten years have elapsed since her marriage with petitioner No.2. she is blessed with a son, who is also present before the court and he is aged around 4 years. Her marriage with petitioner No.2 was solemnized in Mumbai in a temple and marriage certificate has been issued by the temple Board dated 8.12.2015, a copy thereof is filed as Annexure No.3 to the writ petition. However, her father, brother and uncle are still threatening her and her husband and they want to take her back to her parental home against her wishes. The petitioners is residing at the place of a relative of petitioner No.2, being scared by private respondents. Therefore, protection has been prayed for before this Court by way of this petition.

Learned counsel for the petitioners submitted that an FIR was lodged in the matter on 30.7.2014, vide Crime No.176 of 2014, at Police Station Shivkuti, District Allahabad, under Sections 363 and 366 IPC, at the instance of respondent No.4, who is father of petitioner No.1 against petitioner No.2, wherein the statement of petitioner No.1 was recorded under Section 164 Cr.P.C. before the Magistrate, in which she levelled no allegations against the petitioner No.2 and his father Sheet Basant. The FIR was challenged before this Court by father of petitioner No.2, under Section 482 Cr.P.C. wherein the statement of

petitioner No.1 was recorded under Section 164 Cr.P.C. during investigation of that case, wherein, she has levelled no allegations against the petitioner No.2, whom she has referred as her husband as well as his father. She also stated therein that she intends to reside with her husband as she is having a son, aged around two and half years also. She has studied up to Class-X, and in her school record, her date of birth is mentioned as 15.10.1995. Therefore, according to her date of birth, she has attained age of majority and marriage on the date of her marriage, which took place in a temple on 8.12.2015 and thus, there is no legal impediment in the marriage of petitioners and they belongs to Hindu community and marriage was solemnized in accordance with Hindu rites and rituals. However, the petitioners are victimized and threatened by private respondents, which compelled them to take recourse of this Court under Article 226 of Constitution by way of present writ petition. Learned counsel for the petitioners further submitted that proceeding under Section 107/116 Cr.P.C. were launched before Up Zila Magistrate, Machhlishahr, Jaunpur, against private respondents and petitioners and the family members of petitioner No.2, which reveals that the private respondents are still averse to the relationship and marriage of the petitioners. The petitioners are temporarily residing in Mumbai where petitioner No.2 works in a private concern to earn his livelihood. Although the permanent abode of petitioners is lying in District Jaunpur. The petitioner No.2 and private respondents are co-villagers. Petitioners moved an application before SP, Jaunpur seeking protection and to comply the court's order but no concrete action has been taken by the SHO concerned.

Per contra, learned counsel for the respondent Nos.4 to 10, who comprise father, brother, uncle, sister-in-law of the petitioner No.1, submitted that the apprehension raised by the petitioners in present writ petition is not well founded and in fact that is imaginary. The petitioners have already solemnized their marriage some years ago and no threatening or interference was made by the private respondents in their marital life. There is no occasion to seek protection from this Court after lapse of 8 years of marriage with false and concocted allegations against respondents. However, the private respondents have no objection in marital live of the petitioners.

Heard learned counsel for the petitioners and learned Standing Counsel for the State functionaries. In view of the order proposed to be passed, there is no need to issue notice to private respondent. With the consent of learned counsel appearing for the parties, this writ petition is being disposed of finally at this stage in terms of the Rules of the Court.

The Supreme Court in a long line of decisions has settled the law that where a boy and a girl are major and they are living with their free will, then, nobody including their parents, has authority to interfere with their living together. Reference may be made to the judgements of the Supreme Court in the cases of ***Gian Devi v. The Superintendent, Nari Niketan, Delhi and others*, (1976) 3 SCC 234; *Lata Singh v. State of U.P. and another*, (2006) 5 SCC 475; and, *Bhagwan Dass v. State (NCT of Delhi)*, (2011) 6 SCC 396, which have consistently been followed by the Supreme Court and this Court, as well as of this Court in ***Deepika and another v. State of U.P. and others*, 2013 (9) ADJ****

534. The Supreme Court in **Gian Devi (supra)** has held as under:

"7. ... Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is sui juris no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter."

Having regard to the facts and circumstances of the case, I am of the view that the petitioners are at liberty to live together and no person shall be permitted to interfere in their peaceful living. In case any disturbance is caused in the peaceful living of the petitioners, the petitioners shall approach the **Superintendent of Police, Jaunpur** i.e., respondent no.2, with a certified copy of this order, who shall provide immediate protection to the petitioners.

A liberty is granted to the private respondent that if the documents brought on the record are fabricated or forged, it will be open to him to file a recall application for recall of this order.

It is made clear that this Court has not adjudicated upon the alleged marriage of the petitioners and this order in no way expresses opinion about the validity of their marriage.

With the aforesaid observations, the writ petition is disposed of. No order as to costs.

Order Date :- 12.10.2023

Kamarjahan