

Court No. - 50

Case :- WRIT - C No. - 26183 of 2023

Petitioner :- Anjali Satish Sharma And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Hasan Parvej

Counsel for Respondent :- C.S.C., Umesh Singh

Hon'ble Ram Manohar Narayan Mishra, J.

Heard learned counsel for the petitioners, learned Sri Ashwani Kumar Tripathi, Additional CSC whereas none appeared on behalf of the opposite party Nos.4 and 5.

Learned counsel for the petitioners submitted that the petitioners are living in live-in relationship out of free will, love and choice, after attaining age of majority, as date of birth of petitioner No.1 is mentioned as 16.11.2001 and that of petitioner No.2 is 7.5.1994 in their respective Aadhar cards. The petitioner No.2 was previously married with one Smt. Laxmi on 16.7.2018, however, the relationship between the spouse got strained and they parted their ways and they filed a petition under Section 13-B of Hindu Marriage Act seeking divorce with mutual consent and order-sheet of divorce case is filed alongwith supplementary affidavit today, which reveals that a divorce case is still pending as parties are not appearing therein on many dates before the court. He further submitted that the respondent No.5 Laxmi previous wife of petitioner No.2 has solemnized marriage with one Fateh Bahadur during pendency of petition under Section 13-B of Hindu Marriage Act. Two children born out of the wedlock of petitioner No.2 and respondent No.5 are presently residing with respondent No.5. Respondent No.4, who is father of petitioner No.1 and respondent No.5, previous wife of petitioner No.2 are constantly interfering in the peaceful live-in relationship of petitioners due to which they are apprehending danger to their life and liberty. The petitioners have also filed joint affidavit in support of their contention in present petition. Petitioners moved a joint application before S.P., Bareilly through registered post, wherein they have sought protection from parents of petitioner No.1 but no action has been taken in the matter. They have also made a declaration through Notary public at Prayagraj on 1.8.2023 with regard to their live-in relationship and a copy thereof has been filed on record.

Per contra, learned Standing Counsel submitted that the relationship of the petitioners cannot be held as legal as the divorce

petition between petitioner No.2 and his wife Laxmi- respondent No.5 is still pending and the same has not been decided as yet. He further submitted that the present case is squarely covered by the judgement of this Court in **Asha Devi Vs. State of U.P. in Writ C. No. 18743 of 2020**, wherein a Division Bench of this Court held that if the petitioner has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. Petitioners have no legal right for protection on the facts of the present case inasmuch as such the protection as being asked, may amount to protection against commission of offence under [Section 494/495 I.P.C.](#) It is well settled law that writ of mandamus can not be issued contrary to law or to defeat a statutory provision including penal provision. Once the petitioner No.1 is a married woman being wife of one Mahesh Chandra, the act of petitioners particularly the petitioner No.2, may constitute an offence under [Sections 494/495 I.P.C.](#) Such a relationship does not fall within the phrase "live-in-relationship" or "relationship in the nature of marriage".

Although, in present petition, the petitioners have filed such document, which reveals that a divorce petition under Section 13-B of Hindu Marriage Act is pending between petitioner No.2 and his previously married wife namely respondent No.5 but this is admitted fact that a decree of divorce has not been granted as yet. If respondent No.5 has contracted second marriage, this fact may be raised in separate proceeding but this will not alter the admitted position that the marriage between petitioner No.2 and 5 is still subsisting. Although, the relationship appears to be strained. The petitioners are not entitled to be granted protection by way of writ, order or mandamus as sought in present writ petition due to aforesaid fact and the petition is liable to be dismissed. However, it does not entitle respondent Nos.4 and 5 or any police official to interfere in their peaceful live-in relationship as they are consenting adults and adultery as such has also been decriminalized by Hon'ble Apex Court.

Any person aggrieved by the live-in relationship of the petitioners is at liberty to seek appropriate relief before a competent court or authority but cannot interfere in their peaceful living of the petitioners on that count.

With above observations, present writ petition stands **dismissed**.

Order Date :- 16.10.2023

Kamarjahan