

Court No. - 50

Case :- WRIT - C No. - 28764 of 2023

Petitioner :- Smt.Jayashri And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Chandra Mohan Singh

Counsel for Respondent :- C.S.C.

Hon'ble Ram Manohar Narayan Mishra,J.

Learned counsel for the petitioners and Sri Hasan Abbas, learned Standing Counsel for the State-respondents.

Learned counsel for the petitioners submitted that petitioners are living in live-in relationship out of love, free will and choice. They have already attained the age of majority. Date of birth of petitioner no. 1 is mentioned as 26.4.2003 in her Aadhar Card and that of petitioner no. 2 is mentioned as 4.7.2002 in his Aadhar Card. They have solemnized marriage at Alop Devi Mandir, Prayagraj according to Hindu rites and rituals. Petitioner no. 1 was previously married with one Rahul Bhalrao, resident of Himboli, Maharashtra but he was unable to maintain her properly and he subjected to her cruelty. He is habitual drunkard. She left her husband due to constant harassment meted out to her and went to petitioner no. 2 to lead peaceful life with him. Petitioners being consenting adult are having right to choice of their partner. The private respondent in collusion with local police are threatening and harassing the petitioners of dire consequences due to which they are apprehending danger to their life and liberty. They have filed a joint affidavit in support of their pleadings. They have also applied for registration of their marriage through online before the Registrar, Marriages.

Per contra, learned Standing Counsel appearing for the State respondents submitted that relationship of petitioners cannot be said as lawful and legal due to fact that marriage of petitioner no. 1 with her previous husband, has not been dissolved by orders of competent court. Law does not protect live-in relationship of a couple, out of whom, marriage of one of them with his previous spouse is subsisting. Learned Standing Counsel cited a judgment of Division Bench of this Court in **Asha Devi and another Vs. State of U.P. and three others, (2020) Supreme (Alld) 1084**, wherein, this Court has held as follows:-

" It is settled law that writ of mandamus can be issued 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. Similar view has also been taken by Hon'ble Supreme Court in Kalyan Singh vs. State of U.P.. Applying the principles of issuance of writ of mandamus on the facts of the present case, we find that the 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. The petitioners do not have legally protected and judicially enforceable subsisting right to ask for mandamus."

In view of above pronouncement of Division Bench of this Court, this Court finds that matrimonial alliance of petitioner no. 1 with her previous husband is still subsisting in the eye of law in spite of the fact that they have parted their ways and living separately.

In the light of aforesaid judicial authorities and the facts and circumstances of this case, this Court is not inclined to exercise its discretionary jurisdiction under Article 226 of the Constitution of India, and consequently writ petition is hereby dismissed.

Order Date :- 19.10.2023

Dhirendra/