

Court No. - 50

Case :- WRIT - C No. - 30131 of 2023

Petitioner :- Astha Chauhan And Another

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

Counsel for Petitioner :- Ram Mohan,Ajeet Shukla

Counsel for Respondent :- C.S.C.

Hon'ble Ram Manohar Narayan Mishra,J.

Heard learned counsel for the petitioners, Sri Pankaj Singh, learned Standing Counsel for the State functionaries and perused the material placed on record.

The petitioners have preferred this writ petition for a direction upon the respondents not to interfere in their married life and also for protection of their lives and liberty.

Learned counsel for the petitioners submitted that petitioners are living in live-in relationship out of love, free will and choice, after attaining age of majority. Age of petitioner No.1 is 21 years and that of petitioner No.2 is 35 years at present. The date of birth of petitioner No.1 is mentioned as 26.12.2003 and that of petitioner No.2 is 15.7.1988 in their respective Aadhar Cards. Petitioner No.1 is married to respondent No.4 in the year 2019, when she was minor. Petitioner No.1 is an alcoholic, who used to harass petitioner No.1 both physically and mentally, due to which she was compelled to part her ways from her husband and associated with petitioner No.2. She is living in live-in relationship with petitioner No.2 for last six months and they have filed a notary affidavit dated 11.8.2023. However, respondent No.4, husband of petitioner No.1, is strongly opposed to the relationship of the petitioners. He is hurling constant threats to them and interfering in their peaceful life with the assistance of local police. The petitioners have filed joint affidavit in support of their pleadings. Petitioner No.1 moved an application seeking protection from respondent No.4 wherein she has stated that she has been victim of abusive attitude and high handedness of her husband for long period. He would often gives her beating but no action was taken thereon.

Per contra, learned Standing Counsel submitted that this is admitted fact that no decree of divorce has been passed by any competent Court regarding marital relationship of the petitioner

No.1 and respondent No.4. Petitioner No.1 will still be treated as legally wedded wife of respondent No.4 and therefore, the petitioners are not entitled to seek any writ, order or direction in the nature of mandamus from this Court for their protection by State authorities. Learned Standing Counsel placed reliance on the judgement of Division Bench of this Court passed in the case of **Asha Devi and Another vs. State of U.P. and 3 others, (2020) Supreme (Alld) 1084**, wherein this Court refused to grant protection to a couple one of whom was already married.

Division Bench of this Court in **Asha Devi and Another vs. State of U.P. and 3 others, (2020) Supreme (Alld) 1084**, considered the question of grant of protection to a heterogeneous couple, who are living in live-in relationship and held that 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., AIR 1962 SC 1183](#), and in **Director of Settlement, A.P. Vs. M.R. Apparao, (2002) 4 Supreme Court Cases 638**, 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 the light of foregoing discussions and the case law cited, as above, the writ petition is devoid of merits and is liable to be dismissed.

Accordingly, present writ petition stands **dismissed**, as this Court is not inclined to exercise its discretionary jurisdiction in facts of the case.

However, the petitioners are at liberty to seek appropriate relief before the police authority or competent court, if any criminality is committed against them by respondent No.4 or any other person.

Order Date :- 31.10.2023

Kamarjahan