Court No. - 44

Case :- WRIT - C No. - 35388 of 2023
Petitioner :- Smt. Jayprada And Another
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Ram Badan Maurya
Counsel for Respondent :- C.S.C.

Hon'ble Prashant Kumar,J.

1. Heard Sri Ram Badan Maurya, learned counsel for the petitioners, learned standing counsel for the State respondents.

2. Facts of the case are that the petitioner no.1 is married to respondent no.4, however, she is living in relation with petitioner no.2 and she has filed the instant writ petition seeking direction in the nature of mandamus directing the respondent nos.2, 3 & 4 not to interfere in her live in relationship with petitioner no.2 and also protect her life from the respondents.

3. Learned Standing Counsel states that admittedly the petitioner no.1 is legally wedded wife of respondent no.4 and she is living with petitioner no.2 without taking divorce. He further submits that the controversy involved in this matter has already been decided by a division Bench of this Court vide order dated 01.12.2020 passed in Writ-C No. WRIT - C No.-18743 of 2020 (Asha Devi And Another vs. State Of U.P. And 3 Others). For ready reference relevant portion of the aforesaid order is quoted hereunder:-

i) A "relationship in the nature of marriage" is akin to a common law marriage. Common law marriages require that although not being formally married :-

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(ii) A `relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a `shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a `domestic relationship'.

(iii) Following relationship have not being recognised or approved as live-in-relationship or relationship in the nature of marriage. This list is not exhaustive but merely illustrative :-

(a) Concubine can not maintain relationship in the nature of marriage.

(b) Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one's husband or wife, cannot be said to be a relationship in the nature of marriage. Polygamy is also a criminal offence under Sections 494 & 495 I.P.C.

(c) Till a decree of divorce is passed the marriage subsist. Any other marriage during the subsistence of the first marriage would constitute an offence under Section 494 I.P.C. read with Section 17 of the Hindu Marriage Act, 1955 and the person, inspite of his conversion to some other religion would be liable to be prosecuted for the offence of bigamy

(d) If both the persons are otherwise not qualified to enter into a legal marriage including being unmarried.

(iv) 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". The writ petition has been filed by the petitioners for protection from interference by others in their living as husband and wife. If the protection as prayed is granted, it may amount to grant protection against commission of offences under Sections 494/495 I.P.C.

(v) 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. (supra) and in Director of Settlement A.P. (supra). 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.

4. Considering the facts as well as the law laid down by this Court in the case of **Asha Devi (supra)** this Court is of the considered opinion that the petitioners have no legal right for protection, inasmuch as, the protection as being asked, may amount to protection against commission of offence under Section 494/495 I.P.C. The 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.

5. Accordingly, this writ petition is dismissed.

Order Date :- 12.10.2023
S.P.

Digitally signed by :-
SANJAY PURI
High Court of Judicature at Allahabad