Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9027 of 2023

Petitioner :- Gulafshan And Another
Respondent :- State Of U.P. Thru. Secy., Home, Lko. And 3 Others
Counsel for Petitioner :- Manuvendra Singh
Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.
Hon'ble Narendra Kumar Johari,J.

(1) Heard learned counsel for the petitioners and learned A.G.A. who appears on behalf of the State Respondents.

(2) This petition has been filed with the following main prayer:-

"*(i) Issue a writ, order or direction in the nature of Mandamus Commanding the opposite parties not to harass and not to adopt any coercive measure against the petitioners in the peaceful living of the petitioner.*"

(3) It has been submitted by learned counsel for the petitioners that petitioner no.1 and petitioner no.2 are both major, who on their own volition and free will have got married out of their own sweet will with each other in accordance with Muslim rites and rituals on 17.11.2023, but the family members of petitioner no.1 are unhappy to such marriage. In support of his submission that petitioner no. 1 is major, learned counsel for the petitioners has drawn our attention to the annexure no.2 to the petition, which is High School Certificate of the petitioner no.1 and according to which the date of birth of petitioner no.1 is 20.05.1995. They are being harassed by the opposite party no.4, who is the mother of the petitioner no.1. They therefore prayed for the benefit of the judgement rendered by the Hon'ble Supreme Court in the case of ***Lata Singh Vs. State of U.P. and another, 2006 (5) SCC 475*** and the observations made in paragraph 17 which reads as under:-

"17..... We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a women or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or

commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.".

(4) This Court has found from the perusal of judgement rendered in ***Lata Singh Vs. State of U.P. and another, 2006 (5) SCC 475*** wherein the appellants had approached the Supreme Court against the police harassment because of F.I.R. being lodged by the brother of appellant no.1.

(5) In the case of the petitioners there is no F.I.R. lodged. The police cannot be presumed to harass the petitioners only under the influence of the private respondent no.4. The action of Police is governed by the provision of Code of Criminal Procedure, 1973. Particularly, Chapter XII of the Code makes provision for information to Police and their power to investigate. In absence of any proof of such information regarding which the provision has been made under Section 154 and 155 of the Cr.P.C., it will not be justified to grant a blanket protection to the petitioners as prayed.

(6) This writ petition is ***disposed of*** with a direction to the petitioners that in case they are being threatened by their family members, they may file an application under Section 154(2) or 154(3) of the Cr.P.C. before the Police Station/Superintendent of Police concerned, or move an application under Section 156 (3) of the Cr.P.C. before the Magistrate concerned or file a complaint case under Section 200 of the Cr.P.C. before the authorities concerned.

(7) However, it is made clear that by passing this Order, this Court is not validating the marriage of the petitioners.

Order Date :- 24.11.2023
Darpan Sharma

Digitally signed by :-
DARPAN SHARMA
High Court of Judicature at Allahabad,
Lucknow Bench