

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

112

CRWP-3411-2024
Date of Decision : April 19, 2024

RAJ KUMAR AND ANOTHER -PETITIONERS

V/S

STATE OF PUNJAB AND OTHERS -RESPONDENTS

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms. Sunita Devi Spehia, Advocate
for the petitioners.

Mr. Pardeep Bajaj, D.A.G., Punjab.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, the petitioners, a quinquagenarian couple, seeks issuance of a mandamus upon the respondents No.2 and 3, to ensure protection of their lives and liberty at the hands of respondents No.4 and 5, and, also to restrain the said respondents from interfering in their peaceful married life.
2. What surfaces from a scrutiny of the instant petition, is that, prior to solemnizing marriage with the petitioner No.2, the petitioner No.1 was married to one Surinder Kaur, whose demise had unfortunately occurred on 25.07.2009. After demise of his spouse, the petitioner No.1 had, on 11.04.2024, solemnized marriage with the petitioner No.2, who is stated to be unmarried at that time. Moreover, the petitioners are stated to be working in a private factory at Jalandhar, wherefrom they are earning sufficiently to maintain themselves and to fulfill their nuptial obligations towards each other.

3. The principal cause behind the petitioners being driven to this Court for seeking issuance of the mandamus (supra), is that, their marriage has caused grievance to the respondents no.4 and 5 and such grievance has made them apprehensive of danger to their lives and liberty. Before rushing to this Court, the petitioners had even made a representation dated 11.04.2024 (Annexure P-8) before the respondent No.2, however, the same has purportedly remained unactioned.

4. This Court is unable to comprehend as to how two mature, responsible and consenting adults, who have decided to spend their lives together, and that too after legally solemnizing marriage, are not allowed to live a peaceful life as per their own wishes. To marry a person of one's own choice, is the fundamental right of every citizen. No one is bestowed with any right or authority to interfere in the marriage preferences of independent adults. Had the authority(ies) concerned, which was seized of petitioners' representation (supra), handled the matter with due care and circumspection, the petitioners would not have been constrained to approach this Court.

5. The Hon'ble Supreme Court has, in its judgment rendered in ***“Laxmibai Chandaragi B & Anr. V/s The State of Karnataka & Ors.”***, ***Writ Petition (Criminal) No.359/2020, Decided on: 08.02.2021***, held in unambiguous terms that consent of family, community or clan is not necessary once two adult individuals agree to enter into a wedlock. The relevant paragraph of this judgment is extracted hereinafter:-

“10. We are fortified in our view by earlier judicial pronouncements of this Court clearly elucidating that the consent of the family or the community or the clan is not necessary once

the two adult individuals agree to enter into a wedlock and that their consent has to be piously given primacy. It is in that context it was further observed that the choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. Such a right or choice is not expected to succumb to the concept of “class honour” or “group thinking.”

6. The High Court of Delhi, speaking through Justice Saurabh Banerjee, in W.P. (CRL) 3045/2023, Decided on: 17.10.2023, has also observed that the right to marry is an incident of human liberty. The relevant paragraphs of this judgment are extracted hereinafter:-

“5. The right to marry is an incident of human liberty. The right to marry a person of one's choice is not only underscored in the Universal Declaration of Human Rights, but is also an integral facet of Article 21 of The Constitution of India, which guarantees the right to life.

7. When the parties herein are two consenting adults who have chosen to willingly agree to join hands by way of marriage, there can hardly be any impediment on the way, be it from the parents/relatives or the Society at large or the State. There is nothing left for anybody to interfere in the lives of the parties herein...”

7. Moreover, the Hon’ble Supreme Court has, in its judgment titled as **“Shakti Vahini V/s Union of India and Others”, Writ Petition (Civil) No.231 of 2010, Decided on: 27.03.2018**, issued certain guidelines for ensuring protection of couples who marry against the wishes of their families or clan, and, also observed as under:-

“Assertion of choice is an insegregable facet of liberty and dignity. That is why the French philosopher and thinker, Simone Weil, has said:-

“Liberty, taking the word in its concrete sense consists in the ability to choose.”

When the ability to choose is crushed in the name of class honour and the person's physical frame is treated with absolute indignity, a chilling effect dominates over the brains and bones of the society at large. The question that poignantly emanates for consideration is whether the elders of the family or clan can ever be allowed to proclaim a verdict guided by some notion of passion and eliminate the life of the young who have exercised their choice to get married against the wishes of their elders or contrary to the customary practice of the clan. The answer has to be an emphatic "No". It is because the sea of liberty and the ingrained sense of dignity do not countenance such treatment inasmuch as the pattern of behaviour is based on some extra-constitutional perception. Class honour, howsoever perceived, cannot smother the choice of an individual which he or she is entitled to enjoy under our compassionate Constitution. And this right of enjoyment of liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with resplendence. It is also necessary to state here that the old order has to give way to the new. Feudal perception has to melt into oblivion paving the smooth path for liberty. That is how the statement of Joseph J. Ellis becomes relevant. He has propounded:-

"We don't live in a world in which there exists a single definition of honour anymore, and it's a fool that hangs on to the traditional standards and hopes that the world will come around him."

2. *Presently, to the factual score. The instant Writ Petition has been preferred under Article 32 of the Constitution of India seeking directions to the respondents- State Governments and the Central Government to take preventive steps to combat honour crimes, to submit a National Plan of Action and State Plan of Action to curb crimes of the said nature and further to direct the State Governments to constitute special cells in each district which can be approached by the couples for their safety and well being. That apart, prayers have been made to issue a writ of mandamus to the State Governments to launch prosecutions in each case of honour killing and take appropriate measures so that such honour crimes and embedded evil in the mindset of certain members of the society are dealt with iron hands."*

8. Astonishingly, despite issuance of detailed guidelines, in numerous judgments, by the Hon'ble Supreme Court and various High Courts, the petitioners have to approach this Court for issuance of a mandamus upon the authority concerned to act upon their representation.

9. Since the only issue which requires adjudication herein, at this stage, is the representation of the petitioners remaining unactioned, inasmuch as, no decision has been taken thereon, therefore, without issuing notice to the private respondents at this stage, notice is issued only to the official respondent(s).

10. On the asking of the Court, Mr. Pardeep Bajaj, D.A.G., Punjab, accepts notice on behalf of the official respondent(s).

11. Without entering upon an exercise to evaluate the evidentiary value of the documents placed on the file, the instant petition is disposed of with a direction to the respondent no.2 - Commissioner of Police, Jalandhar, to decide the representation (Annexure P-8) of the petitioners and grant them protection, if any threat to their lives and liberty is perceived. The respondent No.2 is directed to take appropriate measures for ensuring that no harm is caused to the petitioners. However, this order shall not be understood to have expressed any opinion whatsoever by this Court on the validity of the marriage of the petitioners.

12. Disposed of accordingly.

April 19, 2024
devinder

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No