

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM No.M-18852 of 2015
Date of Decision: 02.06.2015

Maninder Kaur and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Suresh Kumar Arya, Advocate,
for the petitioners.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes

RAJIV NARAIN RAINA, J.

If the petitioning parties profess in the petition presented for directions under Section 482 of the Code of Criminal Procedure, 1973 that they are married and request for a protection mandamus to the State to act and ensure their physical safety by reason of being a couple living together in their society as husband and wife, may be against the wishes of one or other of their troubled parents, then there is hardly any room for the Court to untie the nuptial knot, whether truly tied or not, and to question their marital status so long as they are major and united in hearth and home by the bonds of love.

Parents may suffer terrible heartburn and may be with serious concern of their child's economic and social wellbeing but still they need to introspect where did they go wrong in parenting for matters to come to such an aggravated pass. But their heartburn cannot burn the hearts of consenting

adults and to put them in fright and fear of bodily harm by their overt and covert acts. This Court is not the least concerned with the validity of the marriage, nor does it certify it as valid by decree, as that is the business of the regular civil courts to consider and decide when the issue is put to the process of adversarial adjudication, if it is at all. After all, time is known to be the best healer and the un-doer of a matrimonial misadventure. The Court lives under no burdens in such a case except as are imposed by the Constitution of India preserved in Article 21. Personal morality or immoral behaviour are not justiciable characteristics in human affairs unless they transgress the boundaries of crime where the police may step in.

In such matters the constitutional court is predominantly pre-occupied only with the life and liberty of the citizen and the safeguards afforded by law against inimical parties smarting from what their progeny did, in their perception, to shame them and then to restrain them from taking law unto their own hands. Marriage is not central to the exercise of this jurisdiction or of its legality. It is only about protection of innocent couples tied willingly together by consent and to afford them affirmative action by Court against threat to their lives which has to be protected even if the enormity of the threat perception is churlish or an imaginary one which is very hard for the Court to decide. The Court must still intervene without trying to be a peeping Tom or a voyeur in private affairs as it is certainly not the final arbiter of how hearts work in private space. Therefore, a direction must go in favour of the petitioner by a Court issued by a "Save our Souls" message sanctioned and enforceable at law. The SSP of the District must always recognize this right without awaiting orders of the Court from case

to case. The only questions to be asked at the hearing on such petitions is, as was observed by the Supreme Court in ***Fiaz Ahmed Ahanger & Ors. v. State of J & K, 2009(3) RCR(Civil) 217***, which are as under :-

“In such cases of intercaste or inter-religion marriage the Court has only to be satisfied about two things :

(1) that the girl is above 18 years of age, in which case, the law regards her as a major vide Section 3 of the Indian Majority Act, 1875. A major is deemed by the law to know what is in his or her welfare.

(2) The wish of the girl.

In the circumstances, we direct that nobody will harass, threaten or commit any acts of violence or other unlawful act on the petitioner; Chanchali Devi/Mehvesh Anjum and the petitioner's family members and they shall not be arrested till further orders in connection with the case in question. If they feel insecure, they can apply to the police and, in such event, the police shall grant protection to them.”

The SSP, would act accordingly in all such cases and in this case as of now.

In view of this, the petition is disposed of with a direction to respondent No.2 to look into the allegations as contained in the petition personally and take necessary steps in accordance with law if the situation so warrants.

(RAJIV NARAIN RAINA)
JUDGE

02.06.2015
manju