IN THE HIGH COURT OF PUNJAB AND HARYANA
137 AT CHANDIGARH

CRM-M- 9215 of 2018
Date of Decision: 01.03.2018.

Shivani Kumari and anr. **...Petitioners**

Versus

Union Territory of Chandigarh and ors. **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Deepak K. Bartia, Advocate
for the petitioners.

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RAJ SHEKHAR ATTRI, J. (ORAL)

The Constitutional philosophy completely eradicates discrimination on the grounds of casts, creed, religion, domicile etc. It has propounded the equality and freedom. But after a lapse of 68 years since after coming into force of the Constitution of India, the citizens, especially in the ruralities, are under the influence of orthodox phenomina and believe in the traditional societies. It gravely affects the doctrine of social justice and equality

The social values in ancient society had propounded freedom, liberty and equality but the shackles of millennium long slavery made the society complexened one and it resulted into the darkest aspect of castism. Hon'ble Supreme Court of India in case "**Lata Singh Vs. State of U.P. & Anr." Reported as 2006 (5) SCC 475;** has observed in para No.17 & 18 as under:-

"17. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when

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> we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severally punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he / she likes. If the parents of the boy or girl do not approve of such inter caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration / police authorities throughout the country will see to it that if anybody or girl who is major undergoes inter-caste or inter-religious marriage with a women or man who is a major, the couple are not harassed by anyone nor subjected to threats or acts of violence, 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 person as provided by law.
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> 18. We sometimes hear of 'honour' killings of such persons who undergo intercaste or interreligious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but were barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

Both the petitioners are claiming legally wedded spouses, albeit , validity of marriage is not in issue before this court . Now they are residing together but they apprehend danger to their life, limb and liberty from the hands of private respondents.

Being the citizens of independent India, both of them have right

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to reside with honour and dignity. Therefore, they have sought the protection from the hands of private respondents and they also sought direction to remaining respondents to provide them protection.

Article 21 of The Constitution of India guarantees the protection of their lives but the private respondents Nos. 4 to 6 are posing threats and danger to their life, limb and liberty. To the mind of this court, the petitioners have every right to seek the protection of their life, limb and liberty.

This Court in "**Pardeep Kumar Singh versus State of Haryana" – 2008(3) RCR (Criminal) 376 (P&H)** had made the following observations with regard to run away couples:-

> "i) Whenever any intimation is received by the SSP/SP of concerned District regarding the marriage of a young couple with a threat and an apprehension of infringement of the right of life and liberty by the police at the instance of the family members of one of the spouses, the SSP/SP concerned will consider the representation and will himself/herself look into the matter and issue necessary directions to maintain a record of the said intimation under Chapter 21 of the Punjab Police Rules.
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> ii) On receipt of abovesaid intimation of marriage by any police officer, necessary directions will be issued to the concerned Police Station to take necessary steps in accordance with law to enquire into the matter by contacting the parents of both and girl- The matter regarding age, consent of the girl and grievance of her family will be determined-In the eventuality of any complaint of kidnapping or abduction having been received from any of the family members of the girl generally the boy (husband) will not be arrested unless the until the prejudicial statement is given by the girl (wife) –

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Arrest should generally be deferred or avoided on the immediate receipt of a complaint by the parents or family, members of the girl taking into consideration the law laid down by Hon'ble Supreme Court in Joginder Kumar's case (supra);

iii)If the girl is major (above 18 years), she should not forcibly be taken away by police to be handed over to her parents against her consent- Criminal force against the boy should also be avoided.

iv) So far as the threat to the young couple of the criminal force and assault at the hands of the private persons is concerned, it would always be open to the police to initiate action if any substantive offence is found to have been committed against the couple;

v) In case of any threat to the breach of the peace at the hands of the family members of the couple it will always be open to the State authorities to take up the security proceedings in accordance with law;

vi) It will not be open to the "run away couple" to take law in their hands pursuant to the indulgence shown by the police on the basis of their representation sent to the SSP/SP of the concerned District;

vii) If despite the intimation having been sent to the SSP/SP there is an apprehension or threat of violation of right of personal life and liberty or free movement, the remedy of approaching the High Court should be the last report;

viii) In case there is an authority constituted for issuance of marriage certificate as per the law laid down by Supreme Court in Seema's case (supra) in the concerned districts, the couple of so called 'run away marriage' should get the marriage registered in compliance with the directions of the Supreme Court and a copy of the same should also be forwarded to the police alongwith the representations or any time subsequent thereto.

ix). Nothing said hereinabove will prevent the immediate arrest of a person who fraudulently entices a girl with false promises and exploits her sexually as per the statement of the girl."

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Keeping in view the circumstances of this case, the Court hereby issue directions to Union Territory of Chandigarh as well as to the concerned Senior Superintendent of Police, Chandigarh to examine and consider the case of petitioners and if it is found that there is real and genuine threat to their life, limb and liberty at the hands of respondents Nos. 4 to 6, then they will be provided protection forthwith. If the situation so demands, the petitioners be also provided facility of Protection Home as per their requirement. However, this order shall not be applicable in case any act / conduct of any of the petitioners pertaining to the application, amounts to an offense. Petition stands disposed of accordingly. A copy of this order be sent to the Union Territory of Chandigarh and Senior Superintendent of Police, Chandigarh.

(RAJ SHEKHAR ATTRI)
JUDGE

March 01, 2018
Jyoti-IV

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

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