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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-33213-2018

Date of Decision : February 04, 2019

Saroj Khan and another

.... Petitioners

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Mohd. Yousaf, Advocate,
for the petitioners.

Mr. Ashok Kumar Singla , Sr. DAG, Punjab,
for respondent-State.

Mr. Mohd. Salim, Advocate,
for respondent No.10.

SHEKHER DHAWAN, J.

Petitioners have sought protection of their lives and liberty, *inter alia*, taking the plea that they performed the marriage by way of *Nikah* with each other on 30.07.2018, whereas private respondents did not accept their marriage and they are apprehending danger to their lives and liberty from private respondents i.e., family members of petitioner No.2.

2. Learned counsel for respondent No.10 contended that the present petition is liable to be dismissed as the petitioners have not disclosed complete facts before this Court that petitioner No.1 was earlier married to respondent no.10 and out of that wedlock, a child was born on 8.10.2013, who is with the mother i.e., respondent No.10. As such, the

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present petition for protection is not maintainable. In support of his argument, reliance was placed on the decision of Hon`ble Apex Court in **Mohammed Salim (D) through LRs & Ors. Vs. Shamsudeen (D) Through LRs & Ors., Civil Appeal No. 5158 of 2013, decided on 22.1.2019,**

3. Learned State counsel as well as learned counsel representing respondent no.10 further contended petitioner No.1 being a Muslim cannot perform marriage with petitioner No.2, who is a Hindu girl.

4. Learned counsel for the petitioners while arguing on these points, contended that the petitioners have disclosed the material facts in the present petition and also disclosed the fact regarding second marriage of petitioner No.1. However, it is the first marriage of petitioner No.2. This fact was so mentioned in Para No. 10 of the petition and the affidavit filed by petitioner No.1 on this point is also on the file. So, it is not a case of concealment of facts.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that there is no dispute on the fact that the factum regarding second marriage of petitioner No.1 was disclosed by the petitioners in para No. 10 of the petition and affidavit of petitioner No.1, Saroj Khan is also available on the file in that regard.

6. As regard to the validity of marriage, though it shall be question of fact to be decided by Court of competent jurisdiction if the same is challenged at any stage by the aggrieved party, whether the marriage is legal one or not, but at any rate, both the petitioners being citizens of India are certainly entitled to protection as per law if they are having threat to their lives.

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7. Similar matter was before Hon`ble Apex Court in **Lata Singh Vs. State of U.P. and another, 2006 (3) R.C.R. (Criminal) 870**, wherein view was taken that as per law, there is no bar for a Muslim cannot perform marriage with a Hindu girl, but at the same time, in the present case, as both the petitioners are citizens of India and are major, they are certainly entitled to protection of law if they have any threat to their lives.

8. From the documents appended by the petitioners with the present petition, it appears that both of them are major, born in the years 1986 and 1996, respectively. Even if the petitioners did not perform valid marriage, the question that arises for consideration is whether they can be deprived of the protection of their life and liberty guaranteed under Article 21 of the Constitution?

9. In **Rajwinder Kaur and another Vs. State of Punjab and others, LPA No. 1678 of 2014**, decided on 09.10.2014, Hon`ble Division Bench of this Court while dealing with this issue, held as under:-

“We have no reason to doubt that the fundamental right to life and liberty is so sacrosanct and stands at such a high pedestal that it must be protected even in the absence of an incident like solemnization of a valid marriage between the parties.

While the appellants might be required to satisfy an appropriate forum regarding the validity of their marriage but even in the absence of such validation, the State is obligated to protect their life and liberty. We, thus, modify the order passed by the learned Single Judge and dispose of this appeal with a direction to the respondent-police-authorities to ensure that no harm is caused by anyone to the life and liberty of the appellants. The police-authorities shall, however, verify the age of the appellants and if any further remedial action is required to be taken on such verification, the same shall be taken

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forthwith.

Ordered accordingly.”

10. In view of the above, the present petition is accepted and the Senior Superintendent of Police, Sangrur - respondent No.2, is directed to consider the representation dated 31.07.2018 (Annexure-P/4) and issue necessary orders, as warranted by law, so as to ensure that no harm is caused to the life and liberty of the petitioners at the hands of private respondents.

11. However, it is also made clear that this order shall not be taken to validate the alleged marriage of the petitioners or entitle them for any protection against their arrest or continuance of any criminal proceedings, if they are found involved in the commission of any cognizable offence. In case, the petitioners had committed any offence, the law will take its own course.

12. With the above said observations made and directions issued, the present petition stands disposed of.

(SHEKHER DHAWAN)
JUDGE

February 04, 2019

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes