

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CRWP No.9890 of 2020
Date of Decision:- 07.12.2020

Heena and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Gaurav Deep Goel, Advocate
for the petitioners.

Through Video Conferencing

JASGURPREET SINGH PURI J.(Oral)

The present petition has been filed under Section 482 Cr.P.C. seeking directions for the official respondents No.1 to 3 to provide police protection to the newly married petitioners and to not interfere in the married life of the petitioners in any manner by using force on them or by adopting unlawful means and further for directing the respondents No.4 and 5 to not register any criminal case against the petitioners or their family members at the instance of respondents No.4 and 5.

Learned counsel for the petitioners has submitted that he has confined his prayer only for grant of protection of life and liberty of the petitioners. He has further submitted that petitioner No.2 (husband) has got married to petitioner No.1 (wife) on 24.11.2020 as per Muslim rites and rituals and has also annexed 'Nikahnama' (Annexure P-3). He has further submitted that this marriage of petitioner No.2 is the second marriage with petitioner No.1. However, so far as petitioner No.1 (wife) is concerned, it is her first marriage. It is further submitted that it was because of this reason

that the private respondents are angry and therefore, the petitioners are apprehending threat to their life and liberty.

Since it is the case where petitioner No.2 has got second marriage solemnized and there is nothing on the record to show as to whether petitioner No.2 got the earlier marriage dissolved or not, learned counsel for the petitioners was asked to assist on this issue as to whether the protection can be granted in such case where the husband has got married for the second time without dissolving the earlier marriage under the Muslim law.

Since the matter involved the interpretation of the Muslim law, this Court requested Sh. Mansoor Ali, Advocate to assist on this issue.

Sh. Mansoor Ali, Advocate has joined the video conference proceedings while hearing this case and has assisted in the same. He has submitted that so far as the performance of the second marriage of the Muslim male is concerned, the same is permissible under the Muslim law. He has referred to the book 'Principles of Mahomedan Law', by Sir Dinshah Fardunji Mulla, to refer to clause 194 which is contained in Chapter 14 under the heading, Marriage, Maintenance of Wives and Restitution of conjugal rights, which states that Muslim marriage is a contract. He further referred to Clause 198 which deals with the number of wives. Clause 198 states that a Muslim male can have as many as four wives but not more than that. If he marries his *fifth* wife, then the marriage is not void but merely irregular. However, Clause 198 A is, concerning the plurality of husbands, that it is not lawful for a Muslim woman to have more than one husband at the same time and a marriage with a woman who has her husband alive and who has not been divorced by him is void. Thereafter, he referred to Clauses

201, 202, 203 wherein in case the marriage falls within the prohibited degree, the marriage would be void. Further, he has referred to clause 204 which states that a man may not have, at the same time, two wives who are related to each other by consanguinity, affinity, or fosterage. In case, the marriage is not within the said prohibited clauses, the marriage is lawful. He further referred to Section 2 of the Muslim Personal Law (Shariat) application, 1937 which deals with non-obstante clause to the effect that questions about marriage in a case where the parties are Muslims, shall be according to a Muslims' Personal law (Shariat). He, therefore, submitted that in such a situation by applying the provisions provided by the clauses in Mullah, a Muslim male is entitled to marriage for a second time even in the absence of dissolution of an earlier marriage. He has further referred to the Dissolution of Muslim Marriage Act, 1939 wherein under Section 2(viii) (f), in case a husband has more than one wife and he does not treat the first wife equitably following the injunction of the Quran, the same becomes a valid ground for divorce for the first wife.

Learned counsel for the petitioner has stated based on facts and circumstances of the present case that there is nothing on the record to prove that the second marriage is void as defined by Mullah and therefore, it would be completely legal as the same does not fall in the prohibition clauses of consanguinity, affinity, and fosterage.

Learned counsel for the petitioner has submitted that although the petitioner is not raising any issue concerning the legality of marriage, he is confining his scope only to the purpose of protection of life and liberty of the petitioners.

Notice of motion.

On the asking of the Court, Mr. Munish Sharma, AAG, Haryana, accepts notice on behalf of respondents No.1 to 3.

Considering the facts and circumstances, the present petition is disposed of and it is directed that respondent No.3 shall assess the threat perception of the petitioners in this regard and in case, any threat exists, then further action be taken in accordance with law.

However, it is clarified that these directions are only for the grant of protection of life and liberty to the petitioners and do not anything reflect any kind of observations concerning the validity of the marriage or any other dispute of any kind.

Accordingly, the writ petition is disposed of.

07.12.2020
D.Bansal

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No