

CRWP No.66 of 2021

Date of Decision: 06.01.2021.

Komal and another

...Petitioners

vs.

State of Punjab and others

...Respondents

Coram : Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Baljeet Nain, Advocate for the petitioners.

B.S. Walia, J. (VC)

1. Case is being taken up for hearing through Video Conferencing due to the outbreak of Covid-19 pandemic.

2. Prayer in the petition under Article 226 of the Constitution of India is for the issuance of a writ of Mandamus for directing official respondent Nos.2 to 5 to protect the life and liberty of the petitioners and not to interfere in their peaceful life at the behest of respondent Nos. 6 to 12 and other relatives, as well as to decide representation (Annexure P-3) dated 28.12.2020.

3. Learned counsel contends that the petitioners seek protection against threats held out by respondent Nos.6 to 12 to cause harm to their life and personal liberty on account of their staying together out of their free will, without any force, fraud or coercion though against the wishes of respondent Nos.6 to 12. Learned counsel contends that petitioner No.1 is approximately 22 years of age on account of her year of birth recorded

petitioner No.2, as per his Aadhaar Card (Annexure P/2) is recorded as 06.11.2000, in other words, he is 20 years 02 months of age.

4. Learned counsel contends that petitioners have mutual liking for each other and want to get married but are unable to do so on account of petitioner No.2 not having attained the age of marriage in terms of Section 5 (iii) of the Hindu Marriage Act, 1955. The parents of petitioner No.1 on being aware of the relationship of the petitioners have threatened them with harm to their life and liberty, if petitioner No.1 does not marry the person of their choice, as a result of which on 26.12.2020, petitioner No.1 came to the house of petitioner No.2 and apprised him about the situation but even on petitioner No.2 making a phone call to the parents of petitioner No.1, the parents of petitioner No.1 did not see reason and threatened to kill the petitioners, if they solemnized marriage or kept any relations amongst themselves.

5. Learned counsel contends that in the circumstances, the petitioners are staying away from their respective houses and have moved a representation (Annexure P-3) dated 28.12.2020 before respondent Nos.2 to 5 for protection of their life and liberty but no decision has been taken on the same, till date, therefore, the petitioners would be satisfied, if the criminal writ petition is disposed of by directing respondent No.2 i.e. the Senior Superintendent of Police, Fatehgarh Sahib to consider and decide the aforementioned representation and take action, in accordance with law, in a time bound manner, especially in view of the decision of Hon'ble the Supreme Court in 'Nandakumar and another versus State of Kerala and others', 2018(2) RCR(Civil) 899. Relevant extract of the

same is reproduced as under:-

“9. We need not go into this aspect in detail. For our purposes, it is sufficient to note that both appellant No. 1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that ‘live-in relationship’ is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.

10 to 13 xxx xxx xxx

14. Accordingly, we allow this appeal and set aside the impugned judgment of the High Court. However, since Thushara has not appeared as she was not made party in these proceedings, while setting aside the directions of the High Court entrusting the custody of Thushara to respondent No. 4, we make it clear that the freedom of choice would be of Thushara as to with whom she wants to live.”

6. Notice of motion.

7. On the asking of Court, Mr. Hittan Nehra, Addl. AG, Punjab, accepts notice on behalf of respondent No.2 and after perusal of the advance copy of the petition states that he has no objection to the limited prayer made by learned counsel for the petitioners.

8. Accordingly, in view of the decision of Hon’ble the Supreme Court in ‘Nandakumar’s case (supra) but without commenting upon the age of the petitioners, validity or authenticity of the documents

disposed of by directing respondent No.2 i.e. the Senior Superintendent of Police, Fatehgarh Sahib (Punjab), to consider and decide representation (Annexure P/3) dated 28.12.2020 submitted by the petitioners after taking into account all aspects of the matter, as expeditiously as possible and thereafter take such action in respect thereto in accordance with law as may be warranted keeping in view the threat perception to the petitioners. However, it is made clear that this order shall not bar any civil or criminal proceedings initiated against the petitioners in accordance with law.

(B.S. Walia)
Judge

January 06, 2021

'Rajneesh'

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No