

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP No.763 of 2021 (O&M)
DATE OF DECISION: 27.01.2021

Nishan Singh and another

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Sandeep Arora, Advocate for the petitioners

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ALKA SARIN, J. (Oral):

Heard through video conferencing.

This is a Criminal Writ Petition under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent Nos.2 to 4 to safeguard the lives of the petitioners by providing police help to the petitioners and further directing the respondent Nos.3 to 6 not to interfere with the life and liberty of the petitioners.

The facts, as set out in the petition, are that the petitioners are both major. The date of birth of petitioner No.1 is 22.01.1992 as per his Aadhar Card (Annexure P-1) and that of petitioner No.2 is 30.07.1985 as per her Aadhar Card (Annexure P-2). It is further alleged that the relatives of petitioner No.2 are against the relationship of the petitioners. However, the petitioners have since got married on 21.01.2021 at Gurudwara Dashmesh Pita, Kharar as per Sikh rites and ceremonies. The marriage photographs have been attached as Annexure P-3 (colly.). It has further

been stated in the petition that petitioner No.1 was earlier married to one Mandeep Kaur and had taken a Panchayati Divorce on 19.06.2017, whereas, petitioner No.2 was earlier married to one Harjinder Singh and had got a divorce under Section 13-B of the Hindu Marriage Act, 1955 vide judgment and decree dated 14.07.2000 (Annexure P-7) passed by the District Judge, Kapurthala.

Learned counsel for the petitioners would contend that the petitioners are apprehending danger to their life and liberty. On a query put to learned counsel for the petitioners as to the marital status of petitioner No.1, Nishan Singh, it has been stated that Annexure P-6 is an affidavit dated 19.06.2017 of the first wife of Nishan Singh wherein she has stated that she and Nishan Singh had got a Panchayati divorce. Strangely, the learned counsel is relying upon a Panchayati divorce which has no recognition in the eyes of law. There is no decree of dissolution of marriage of petitioner No.1 by a Court of competent jurisdiction and his first marriage subsists in the eyes of law. The learned counsel has also not been able to show as to how this Court can provide protection to the petitioners as a couple when petitioner No.1 has not legally divorced his earlier spouse. The petitioner Nos.1 and 2 are alleged to have got married without petitioner No.1 obtaining a legally valid divorce from his first wife.

The Hindu Marriage Act was enacted in the year 1955. It is an Act to amend and codify the law relating to marriages among Hindus. The Hindu Marriage Act, 1955 is a complete Code and provides for the conditions of marriage as well as the procedure for divorce. After the enactment of the Hindu Marriage Act, 1955, marriages and divorce qua

Hindus is governed by the procedure as set out in the Hindu Marriage Act, 1955. Section 4 of the said Act reads as under :

- “4. Overriding effect of Act - Save as otherwise expressly provided in this Act,*
- (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;*
- (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.”*

In view of Section 4 of the Hindu Marriage Act, 1955 all customs and usages ceased to have effect. The contention of the learned counsel that petitioner No.1 had sought and got a Panchayati divorce is thus an argument which cannot be accepted. In fact, the alleged marriage itself between petitioner No.1 and petitioner No.2 would be illegal and against the provisions of the Hindu Marriage Act, 1955 inasmuch as this marriage has been contracted without the petitioner No.1 being legally divorced. An argument has been raised by the learned counsel for the petitioners that the petitioners are uneducated people and, hence, are not aware of the niceties of the law. However, with the petition itself the judgment and decree passed under Section 13-B of the Hindu Marriage Act, 1955 in the case of petitioner No.2 has been attached which clearly

goes to show that the petitioners are aware of the law. Even otherwise, not being aware of the law cannot be a valid defence.

Article 21 of the Constitution of India provides that no person shall be deprived of his life and liberty except in accordance with law. The petitioners have approached this Court for protection of their life and liberty to live as a couple which cannot be considered in the facts and circumstances of the present case. However, as an individual either of the petitioners, if they apprehend any threat to their life or liberty, would be entitled to approach the Police for redressal of their apprehensions regarding threats to their life and liberty.

In view thereof, the present petition is held to be not maintainable at the behest of the petitioners who have got married without petitioner No.1 being legally and validly divorced. As stated above, the petitioners, as individuals, would always be at liberty to approach the concerned Senior Superintendent of Police for redressal of their apprehensions regarding threats to their life and liberty. Needless to mention, in the event of such a representation being made by either of the petitioners' in their individual capacity, the concerned officer(s) shall consider the same in accordance with law.

Disposed off accordingly.

(ALKA SARIN)
JUDGE

27.01.2021
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NOTE:

Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO