

CRWP No. 8347 of 2021

Date of Decision: 03.09.2021

Shokeen and another

.....Petitioners

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Mazlish Khan, Advocate,
for the petitioners.

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

By this petition, the petitioners seek protection of life and liberty at the hands of respondent no.4 and 5, (who are stated to be the father and uncle of petitioner no. 1), upon them having married each other (as contended) against the wishes of the said respondents, on 22.08.2021.

Learned counsel for the petitioners submits that though both the petitioners were earlier married to different persons, they have obtained “a customary divorce” (for which there is no evidence in this petition) and have thereafter married each other vide a '*Nikah*' performed on 22.08.2021 (a copy of such '*Nikahnama*' is shown to be annexed as Annexure P-3 with the petition).

The petitioners are both shown to be well above the age of majority, though of course other than copies of their Aadhar cards, there is no firm proof of age and consequently, at “face value” their ages cannot be accepted as given in the petition because at the time of issuance of Aadhar

cards, no documentary proof is usually asked for as regards the age of the applicant.

Be that as it may, this being a petition seeking only protection of life and liberty of the petitioners, which is a basic fundamental right of every citizen enshrined in Article 21 of the Constitution of India, without making any comment whatsoever on the validity of the marriage or otherwise, with Section 497 of the IPC (pertaining to adultery) having been struck down by the Supreme Court as being violative of Articles 14, 15 and 21 of the Constitution of India, in **Joseph Shine** vs. **Union of India**, Writ Petition (Criminal) No. 194 of 2017, decided on 27.09.2018, obviously, no criminal offence in that regard can be stated to have been committed by the petitioners.

Consequently, this petition is disposed of with a direction to respondents no. 2 and 3, i.e. the Superintendent of Police, Nuh and the SHO Police Station Ferozepur Jhirka, District Nuh, respectively, that the lives and liberty of the petitioners is duly protected.

However, it is also made clear that if, upon verification, the age of either of the petitioners is found to be less than marriageable age for males and females in terms of the Prohibition of Child Marriage Act, 2006, this order shall not prevent proceedings as regards that Act, all offences punishable under the said Act being cognizable offences in terms of Section 15 thereof, with no distinction seen in that statute, as regards its applicability, on the basis of religion or caste etc.

Obviously, any proceedings instituted by the first spouses of the petitioners, for restitution of conjugal rights etc. (if otherwise maintainable),

would not be influenced by this order.

Further, it is made clear that if any of the averments made in the petition is found to be incorrect, specifically with regard to either the petitioners being in any prohibited relationship to each other, or as regards their previous marital status, this order shall not be construed to be a bar on proceedings initiated as per law.

September 03, 2021
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes