

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

CRWP-3791-2021

Date of decision : 22.06.2021

Rajni Bala and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr. Pradeep Panwar, Advocate
for the petitioners.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

RAJESH BHARDWAJ, J. (Oral)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Petitioner No.1 namely, Rajni Bala daughter of Hansraj, aged about 30 years and petitioner No.2 namely, Payal Rani daughter of Ashok Kumar, aged about 28 years have filed the present petition praying for issuance of direction to respondents No.1 to 3 to safeguard their life and liberty and also directing respondents No.4 to 9 not to interfere in their personal lives and liberty.

As per the contentions in the petition, both the petitioners are girls and are living with each other from the last few years. They are not married and they have a liking of each other and are in *de facto* relationship. They have contented that they shared their feelings with their relatives but their relationship was not acceptable to them and hence, they decided to live with

each other. Thereafter, they are sharing the common rented accommodation but the respondents-relatives are totally against them and threatening them to eliminate. They have filed the representation dated 24.03.2021 before the Police Commissioner, Ludhiana with a request of providing protection to them. The petitioners have further contented that under Article 21 of the Constitution of India, it is their fundamental right to live with dignity and as they are major, the interference at the hands of their relatives and others has no place in the eyes of law. As the representation filed by them is simply lying with the Commissioner, thus, they have no other alternative than to approach this Court by way of filing the present petition.

I have heard the counsel for the petitioner and perused the record made available.

It is evident that both the petitioners are girls who are major. The petitioners have contented that they are in a *de facto* relationship and for the same, nobody can cause unnecessary interference in their personal life and liberty. Time and again such issues have come before this Court and as well as before the Hon'ble Supreme Court. In one of the cases titled as ***National Legal Services Authority Vs. Union of India and others***, (2014) 5 SCC 438, the Hon'ble Supreme Court has held that self-determination of gender is an integral part of personal autonomy and self-expression falls with the realm of personal liberty guaranteed under Article 21 of the Constitution of India. The Odisha High Court at Cuttack was seized of similar nature of case in Criminal Writ Petition No.57 of 2020 titled as *Chinmayee Jena @ Sonu Krishna Jena Vs. State of Odisha and others*, which was decided by the Hon'ble Division Bench vide its order dated 24.08.2020. Hon'ble Division Bench relied upon various judgments of Hon'ble Supreme Court

and allowed the writ petition. While deciding, the observations made by the Hon'ble Supreme Court were reproduced by the Hon'ble High Court in its judgment in para No.12 and 14 which read as under:-

12.The Hon'ble Supreme Court of India in the case of Navtej Singh Johar vs. Union of India, (2008) 10 SCC 1 has held that Section 377 of the Indian Penal Code, 1860, which penalizes self-same couples, transgresses Article 14, 15, 19 and 21 of the Constitution of India. In that case, the Hon'ble Supreme Court has held that (i) Section 377 of the IPC, in so far as it criminalises consensual sexual conduct between two adults of the same sex, is unconstitutional; (ii) members of the LGBT community are entitled, as all other citizens, to the full range of constitutional rights including liberties protected by the Constitution; (iii) the choice of whom to partner, the ability to find fulfillment in sexual intimacies and the right not to be subjected to discriminatory behavior are intrinsic to the constitutional protection of sexual orientation; (iv) members of the LGBT community are entitled to the benefit of equal citizenship, without discrimination, and to equal protection of law; and the earlier decision of the Supreme Court in Koushal's case is overruled.

14.Law is a reflection of current social values or norms. Social norms undergo change with time and law keeps abreast with the same Courts recognize these changes and rule on the same. The oft quoted maxim – love knows no bounds has expanded its bounds to include same sex relationships. A reading of the Supreme Court judgements will indicate that individual rights have to be balanced with social expectations and norms. The freedom of choice is therefore available to the two individuals in this case who have decided to have a relationship and live together and society should support their decision. The decisions of the Hon'ble Supreme Court in NALSA vs Union of India : (2014) 5 SCC 438, Anuj Garg vs Hotel Association of India : (2009) 3 SCC 1 and, Navtej Singh Johar vs Union of India : (2008) 10 SCC1 referred to and discussed by S.K Mishra J., have settled the law regarding the right of a person for self determination of his/her sex/gender and consequently the right to have a live in relationship. Therefore the observations of the Hon'ble Apex Court in the case of Shakti Vahini vs Union of India : (2018) 7 SCC 192 ,will also apply to this case. In the Shakti Vahini case,

the Hon'ble Court was dealing with the distressing fallout of "honour crimes" and the illegal activities of "khap panchayats" and laid down various preventive, remedial and punitive measures for dealing with the same by stating the broad contours and modalities. Observations in the said judgment, which are relevant for the present case are quoted below.

*"Assertion of choice is an insegregable facet of liberty and dignity and that is why the French philosopher and thinker, Simone Weil, has said :-
" Liberty, taking the word in its concrete sense consists in the ability to choose."*

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"45. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation , none , we mean ,no one shall be permitted to interfere in the fructification of the said choice .If the right to express one's choice is obstructed , it would be extremely difficult to think of dignity in its sanctified completeness .When two adults marry out of their own volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. And it can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation. The majority in the name of class or elevated honour of clan cannot call for their presence or force their appearance as if they are the monarchs of some indescribable era who have the power, authority and final say to impose any sentence and determine the execution of the same in the way they desire possibly harbouring the notion that they are a law unto themselves or they are the ancestors of Caesar or, for that matter, Louis the XIV. The Constitution and the laws of this country do not countenance such an act and, in fact, the whole activity is illegal and punishable as offence under the criminal law"....."

Thus, it is crystal clear from the law settled by the Hon'ble Supreme Court that the right of choice of the individual cannot be curtailed by the whims and fancies of others. Article 21 of the Constitution of India clearly mandate that no person can be deprived of his life and liberty except in accordance with the procedure established by the law. The relationship of

both the petitioners may not be palatable to many people in the society but that is not sufficient enough to take away their right guaranteed under Article 21 of the Constitution of India.

Though issue raised by the petitioners in the petition is qua their live-in-relationship and their fundamental right to their life and liberty as enshrined in Article 21 of the Constitution of India but the Court is concerned only with their right under Article 21 of the Constitution. Hence, there is no reason not to address the grievances raised by the petitioners qua the same. As a result in the totality of the facts and circumstances of the case, the apprehension of danger to the life and liberty projected by the petitioners cannot be said to be an illusory. Hence, they have right to be heard for the redressal of their well-found grievances. Hence, in agreement with the contentions raised by the counsel for the petitioners, Police Commissioner, Ludhiana is directed to take into consideration the representation filed by the petitioners and assess the threat perception apprehended by them. In case, the allegations are found substantiated then the requisite appropriate action be taken forthwith in accordance with the law.

It is being clarified that observations given hereinabove shall not be understood having provided any immunity to the petitioners from any legal action, if they are found to have committed any violation under the law.

Petition is disposed of.

(RAJESH BHARDWAJ)
JUDGE

22.06.2021
m.sharma

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No