

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-5777-2021 (O&M)
Date of decision: 11.11.2021

Saddam and another

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: None for the petitioners.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for providing protection to petitioners i.e. Saddam, aged about 33 years and Tahira, aged about 25 years, at the hands of respondents No.4 & 5, who are parents of petitioner No.2 and respondents No.6 to 10-other relatives of petitioner No.2.

A perusal of the petition shows that it is pleaded that both the petitioners are known to each other for the last two years and have performed marriage at Ambala Cantt, as per Nikahnama dated 19.06.2021 (Annexure P-3). It is further stated that the petitioners are apprehending threat at the hands of respondents No.4 to 10 and despite making representation dated 20.06.2021 (Annexure P-4) to the Superintendent of Police, Nuh, no action has been taken.

It is also stated that petitioner No.2 was earlier married and she left the matrimonial home on her own sweet will and started living with petitioner No.1. It is stated in para No.12 of the petition that this is second marriage of both the petitioners, as petitioner No.2 was married to another man and similarly, petitioner No.1 has also performed second marriage.

On 29.06.2021, the police authorities were directed to assess the threat perception to the petitioners and act in accordance with law and an observation was made in the said order that it is without commenting upon validity or otherwise of the marriage.

Mr. Munfaid Khan, Advocate has put in appearance on behalf of one Sarmina, first legally wedded wife of petitioner No.1 and has placed on record her Aadhar Card and Aadhar Cards of five children, who were born out of the wedlock of Sarmina with petitioner No.1 Saddam. It is submitted that the lady has been left at the mercy of God, as petitioner No.1 has refused to maintain his legally wedded wife and five minor children aged between 1½ year to 11 years. He has brought to notice of the Court that petitioner No.2 was also earlier married to one Saddam (other than petitioner No.1) and she is also having a child from the said wedlock and so-called marriage between the petitioners is illegal and is not acceptable under the law.

There is no representation on behalf of the petitioners as well as respondents No.4 & 5.

There are two views with regard to deciding the protection petition filed on the basis of live-in relationship or intercaste marriage or where the

parties are seeking protection on the pretext of performing second marriage during subsistence of first marriage. In number of cases, this Court has disposed of the protection petitions with the aid of Article 21 of the Constitution of India, by observing that without commenting upon validity or otherwise of the marriage, concerned police authorities are directed to look into threat perception to the petitioners and act, in accordance with law, however, in some cases, this Court has looked into reciprocal right of the aggrieved persons as well as duties of the persons seeking protection before this Court.

It would be relevant to refer judgment of the Hon'ble Supreme Court in **Dr. Ashwani Kumar Vs. Union of India and others**, Law Finder Doc Id#1305538, wherein it is observed as under: -

“1. “Social justice” in the Preamble of our Constitution has been given pride of place and for good reason since it is perhaps the most important and significant form of justice.

2. In his address on Constitution Day on 26th November, 2018 the Hon'ble President of India emphasised that social justice remains a touchstone of our nation building. The conceptualisation of justice by our Constitution framers was as much valid in 1949 (when the Constituent Assembly debates took place) as it is today. But, with times having changed, varied situations have emerged which may not have existed in 1949 and were perhaps not foreseen at that time. The Hon'ble President spoke on the subject of justice and particularly social justice in the

following words:

*“In the Preamble, **justice is not seen as unidimensional**. It is viewed as having implications across political, economic and social spheres. Political justice implies the equal participation of all adults in the political process and the just formulation and implementation of laws. Economic justice implies the ultimate eradication of poverty, equal opportunities to earn a livelihood, and fair wages. As such the expansion of economic, entrepreneurship and job opportunities are among examples of economic justice.*

*Given the diverse history of our people, and given imbalances and hierarchies that have sometimes marked our past, **social justice remains a touchstone of our nation building**. At the simplest level, it implies the removal of societal imbalances and the harmonisation of rival claims and needs of different communities and groups. **Social justice is about providing equal opportunities.***

*Such a conceptualisation of justice was valid in 1949 and broadly remains relevant today. Even so, the 21st century has brought new challenges. No doubt **the concept of justice** - political, economic and social – has a resilient core but it needs to be thought of in innovative ways. **It requires to be applied afresh to emerging situations –***

situations that may not have existed or been foreseen when our Constitution framers were at work.”

(Emphasis supplied by us).

3. *The rights of elderly persons is one such emerging situation that was perhaps not fully foreseen by our Constitution framers. Therefore, while there is a reference to the health and strength of workers, men and women, and the tender age of children in Article 39 of the Constitution and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want in Article 41 of the Constitution, there is no specific reference to the health of the elderly or to their shelter in times of want and indeed to their dignity and sustenance due to their age.*

4. *Eventually, age catches up with everybody and on occasion, it renders some people completely helpless and dependent on others, either physically or mentally or both. Fortunately, our Constitution is organic and this Court is forward looking. This combination has resulted in pathbreaking developments in law, particularly in the sphere of social justice which has been given tremendous importance and significance in a variety of decisions rendered by this Court over the years. The present petition is one such opportunity presented before this Court to recognise and enforce the rights of elderly persons -*

rights that are recognised by Article 21 of the Constitution as understood and interpreted by this Court in a series of decisions over a period of several decades, and rights that have gained recognition over the years due to emerging situations...”

The Hon’ble Supreme Court in **Dr. Ashwani Kumar’s** case (supra), with reference to right to live with dignity, right to shelter, right to health and Maintenance and Welfare of Parents and Senior Citizens, has held as under: -

*“...44. We accept that the right to life provided for in Article 21 of the Constitution must be given an expansive meaning. The right to life, we acknowledge, encompasses several rights but for the time being we are concerned with three important constitutional rights, each one of them being basic and fundamental. **These rights articulated by the petitioner are the right to live with dignity, the right to shelter and the right to health.** The State is obligated to ensure that these fundamental rights are not only protected but are enforced and made available to all citizens.”*

In another judgment in **Soumitra Kumar Nahar Vs. Parul Nahar, Law Finder Doc Id#1686170**, the Hon’ble Supreme Court has observed as under: -

“...30. It is undisputed that the rights of the child need to be respected as he/she is entitled to the love of both the parents. Even if there is a breakdown of marriage, it does not signify the end of

parental responsibility. It is the child who suffers the most in a matrimonial dispute.

31. It is also well settled by the catena of judgments of this Court that while deciding the matters of custody of the child, primary and paramount consideration is always the welfare of the child. If the welfare of the child so demands, then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The Courts should decide the issue of custody on a paramount consideration which is in the best interest of the child who is the victim in the custody battle.”

The Hon’ble Supreme Court in **State of Haryana Vs. Smt. Santra**, Law Finder Doc Id# 19364, has observed as under: -

“...35. Similarly, under the Mohammedan Law, a father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. [See: Mulla’s Principles of Mohammedan Law (19th Edn.) Page 300]. But the statutory liability to maintain the children would not operate as a bar in claiming damages on account of tort of medical negligence in not carrying out the sterilization operation with due care and responsibility. The two situations are based on two different principles. The statutory as well as personal liability of the parents to maintain their children

arises on account of the principles that if a person has begotten a child, he is bound to maintain that child. Claim for damages, on the contrary, is based on the principle that if a person has committed civil wrong, he must pay compensation by way of damages to the person wronged.

36. Under every system of law governing the patriarchal society, father being a natural guardian of the child, is under moral liability to look after and maintain the child till he attains adulthood.”

Therefore, question, which arises is whether in the peculiar facts and circumstances of this case, this Court is just to pass an order like a **post-office** that as and when a petition for protection under Article 21 of the Constitution of India is filed, the same is forwarded to the police authorities by making an observation that without commenting upon validity or otherwise of the marriage, threat perception should be seen or to the contrary, on application of judicial mind, in a given case, rights of legally wedded wife like petitioner No.1 as well as five minor children should be protected and taken care of by the Court being their guardian in exercise of powers under Article 21 of the Constitution of India. As stated by learned counsel appearing on behalf of legally wedded wife of petitioner No.1 namely Sarmina, petitioner No.1 is owner of 01 acre of land and has share in his ancestral house, where she is residing with five minor children aged about 1½ year to 11 years in Village Dungeja, Punhana, District Nuh. It is duty of the Court to ensure that Sarmina

and her five minor children are not left at mercy of the God and should get proper education and stay in the mainstream of the society and for the purpose of survival, they may not become hardcore criminal or adopt illegal means for survival.

In view of the above, while exercising the suo motu power under Article 226/227 of the Constitution of India read with Section 482 Cr.P.C., this petition is disposed of with a direction to the Deputy Commissioner/Superintendent of Police, Nuh (Mewat) to attach the land of petitioner No.1 and direct Tehsildar, Nuh to ensure that from the sale proceeds of the said land, 1/4th amount is paid to Sarmina, wife of petitioner No.1, so as to enable her to take care of her minor children so that they may stay in the mainstream of the society and may not become hardcore criminals, to earn their livelihood or to survive by illegal means.

Registrar General is directed to ensure that : -

- (a) In all the protection petitions, where party alleges that they are in live-in relationship despite subsisting marriage or where it is alleged that the petitioners have performed second marriage, a declaration be made regarding status of minor children from the first marriage and by giving details of moveable and immoveable property as well as income of the petitioners be made, explaining the manner, in which the petitioner(s) will take care of minor children for their upbringing, education etc.
- (b) It is directed that w.e.f. 01.02.2022 onwards, before passing all

such or similar protection petitions, the aforesaid conditions be complied with.

Disposed of, accordingly.

The compliance report be sent to this Court within a period of three months from today.

[ARVIND SINGH SANGWAN]
JUDGE

11.11.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No