

114

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

CRWP-4464-2022

Date of decision : 11.05.2022

Sabir and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms. Sunita Gupta, Advocate for the petitioners.

Mr. Anmol Malik, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

The present Criminal Writ Petition has been filed under Article 226 of the Constitution of India for issuance of direction to respondent Nos.2 to 4 to protect the life and liberty of the petitioners.

It is the case of the petitioners that they both are major inasmuch as petitioner No.1 was born on 01.01.1993 and petitioner No.2 was born on 18.09.1997, and have married (performed *Nikaah*) each other on 01.05.2022, with their free consent and without any pressure and that this is their first marriage. Reliance has been placed upon Aadhaar Cards (Annexures P-1 and P-2) and the Marriage Certificate/*Nikaahnama* (Annexure P-4). It is also stated by the learned counsel for the petitioners that a detailed representation dated 01.05.2022 (Annexure P-5) has also

been given to respondent Nos.3 and 4 with regard to the same.

Learned counsel for the petitioners has further contended that petitioner No.1 was already married to Hina-respondent No.9 and due to temperamental differences between them, they have got separated from one another as per muslim custom since August 2021 as both belonged to Muslim community. It is further submitted that as per the Muslim Custom, even second marriage during the subsistence of the first marriage is permissible. It is further contended that no legal divorce has been taken by petitioner No.1 from respondent No.9-Hina, who is first wife of petitioner No.1.

Notice of motion to respondent Nos.1 to 4 only.

On advance notice, Mr. Anmol Malik, DAG, Haryana, appears and accepts notice on behalf of respondent Nos.1 to 4 and on a specific query put by this Court, he has stated that he has no objection in case, respondent No.3-Superintendent of Police, looks into the representation dated 01.05.2022 (Annexure P-5) and takes appropriate action in accordance with law.

This Court has heard the learned counsel for the petitioners and has perused the paper book.

In the present case, petitioner No.1 belongs to Muslim community and has separated from his earlier wife namely Hina-respondent No.9 as per Muslim customs. It is the case of the petitioners that under the Muslim law, even second marriage is also permissible for the husband. With respect to the aspect of petitioner no.1 not being legally divorced, it is relevant to refer to a judgment of the Division Bench of this Court dated

03.09.2021 passed in **LPA-769-2021** titled as “**Ishrat Bano and another vs. State of Punjab and others**”. Ishrat Bano (petitioner therein) had filed Criminal Writ Petition no.7903 of 2021 which was dismissed by the learned Single Judge of this Court. The relevant portion of the order passed by the learned Single Judge dated 01.09.2021 is reproduced hereinbelow:-

“Prayer in this writ petition is for issuance of a direction to the official respondents to protect the life and liberty of the petitioners at the hands of respondents No.5 to 9.

Counsel for the petitioners has argued that the petitioners have performed the marriage and are apprehending threat to their life and liberty at the hands of respondents No.5 to 9. It is further submitted that previously, the petitioner No.2 was married to one Alia Hasan and the marriage was annulled by way of divorce documents dated 26.07.2018, 27.08.2018 and 27.09.2018 i.e. vide 03 divorce deeds executed by petitioner No.2 – Aslam Khan himself.

A perusal of these 03 divorce deeds relied upon by the petitioners reveals that these are one sided documents prepared by petitioner No.2 and there are two common witnesses namely Shehnaz Ali and Feroz Khan. There is no signature of the first wife of petitioner No.2 namely Alia Hasan, giving her consent to such divorce. Even otherwise, a perusal of these divorce deeds further reveal that the marriage of petitioner No.2 was performed with Alia Hasan on 06.07.2013 and out of the said wedlock two daughters namely Sohalia Aslam and Amima Aslam were born, who are alive and residing with the first wife of petitioner No.2 i.e. Alia Hasan.

Counsel for the petitioners has further argued that

after this one sided customary divorce, the petitioner No.2 has now performed marriage with petitioner No.1 on 20.08.2021. The Co-ordinate Bench while taking up this petition has directed the petitioners to inform the Court as to how much amount, the petitioner No.2 is ready to give to his earlier wife to enable her to maintain herself.

Despite taking 02 dates, no such proposal has come.

This Court cannot ignore the fact that the Court being legal guardian of the 02 minor girls, who are living at the mercy of their mother – Alia Hasan, as the petitioner No.2 is not only claiming to have divorced his first wife Alia Hasan but he has also refused to maintain and take care of the upbringing of his 02 minor daughters aged 4½ years and 02 years.

On the face of it, the present petition is nothing but a ploy to seek a seal of this Court regarding the lustful and adulterous life of petitioner No.2 with petitioner No.1 and the Court cannot be a party to the same. The arguments of petitioner No.2 that he has a right to perform second marriage under Muslim Law is misconceived as this Court instead of taking an academic view is more concerned about the welfare of 02 minor girls as it is clear that petitioner No.2 has intentionally failed to maintain his first wife and 02 minor daughters.

Accordingly, the present petition is dismissed with Rs.1,00,000/- costs to be paid to Alia Hasan.”

A perusal of above would show that since the Court had primarily observed that the divorce documents were one sided documents, thus, prima-facie it appeared that the divorce was not legal. The matter was

taken up in appeal and the Division Bench of this Court vide judgment dated 03.09.2021 passed in **LPA-769-2021** titled as “**Ishrat Bano and another vs. State of Punjab and others**” held as under:-

“The aspect which we are considering and dealing with is with regard to the threat to the life and liberty to the appellants as has been asserted by them. No doubt, in case a criminal case is registered against any of the parties, the law should take its own course, however, the life and liberty of any person who has approached the Court with such a grievance need to be taken care of and the protection be provided as permissible in law. No person can be permitted or allowed to take law in his hands and therefore, keeping in view the said aspect, we dispose of the present appeal by observing that the Senior Superintendent of Police, Maler Kotla, shall take into consideration the representation dated 17.08.2021 (Annexure P-5) submitted by the appellants and if some substance is found therein, take appropriate steps in accordance with law to ensure that the life and liberty is not jeopardized of the appellants at the hands of the private respondents. This direction shall not be construed in any manner to restrain the official respondents to proceed against the appellants in case there is some criminal case registered against them. The law shall take its own course and it shall be open to the authorities/investigating agency to proceed against the appellants, if required in law and in accordance thereto.”

Thus, the Division Bench after considering the aspect of protection of life and liberty being of paramount consideration and without getting into the issue as to whether the relationship between the parties was

legal or not, even in spite of the fact that there is a criminal case registered against the parties therein, however, granted them protection.

In view of the same, it goes without saying that protection of life and liberty is a basic feature of the Constitution of India. Every person, more so, a major, has the right to live his / her life with the person of his / her choice and at any rate, whenever this Court, prima-facie, is satisfied that on account of some relatives/ persons being unhappy with the relationship between the petitioners, could cause harm to the life and liberty of the petitioners, then in such circumstances, the Courts are required to pass necessary directions for their protection.

After considering the abovesaid facts and without commenting upon the legality of the marriage and expressing any opinion on merits of the case, the present Criminal Writ Petition is disposed of with direction to respondent No.3 to look into the representation dated 01.05.2022 (Annexure P-5) and after considering the threat perception to the petitioners, respondent No.3 will take appropriate action in accordance with law.

It is, however, clarified that this order shall not debar the State from proceeding against the petitioners, if involved in any criminal case.

11.05.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**