

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

109

CRWP-78-2023 (O&M)
Date of decision: 06.01.2023

DIVYA AND ANOTHER

....Petitioner(s)

Versus

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ashish Grewal, Advocate
for the petitioners.

AMAN CHAUDHARY. J.

The present petition has been filed under Article 226 of the Constitution of India read with Section 482 CrPC for issuance of writ in the nature of *mandamus* directing the official respondent Nos. 1 to 3 to protect the life and liberty of the petitioners at the hands of respondent Nos. 4 to 7 and other annoyed relatives of respondent No.5 as they are harassing, interfering in the life of the petitioners who are residing together in a 'live-in relationship' and apprehending threat on account thereof.

Learned counsel for the petitioners while referring to Aadhar cards of petitioner Nos.1 and 2 submits that both the petitioners are major but petitioner No.2 is not of marriageable age as per the Hindu Marriage Act. Learned counsel further submits that the petitioners are in a 'live-in relationship', on account of

Learned counsel for the petitioners limits his prayer to the extent that the petitioners would be satisfied if respondent No.2-Superintendent of Police, Yamuna Nagar is directed to look into the representation dated 02.01.2023 (Annexure P-3), submitted by the petitioners in this regard and take appropriate action on the same.

At the asking of the Court, Mr. Tanuj Sharma, AAG Haryana accepts notice on behalf of respondent Nos. 1 to 3 and states that he has no objection in case respondent no.2 is directed to look into the representation of the petitioners on the aspect of threat perception and to take appropriate action, in accordance with law.

Before proceeding further, it would be worthwhile to make a reference to the provisions and the judgments on the issue involved so as to arrive at a just conclusion.

“Conditions for a Hindu marriage. - A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely-

(i) and (ii) xx xx xx

(iii)the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years] at the time of the marriage;”

SANDAL SHARMA
2023.01.06 16:47
I attest to the accuracy and
authenticity of this order/judgment

Supreme Court has held as under:-

“We need not go into this aspect in detail. For our purposes, it is sufficient to note that both appellant No.1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that live-in-relationship is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.”

In **Shafin Jahan vs. Asokan K.M., (2018) 16 SCC 368**, the Hon'ble Supreme Court of India reiterated the right of choice of an adult and has held thus:-

“The petitioners are seeking protection of their life and liberty as envisaged under Article 21 of the Constitution of India. Article 21 of the Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of his or her personal liberty except as per the procedure established by law. No doubt petitioner No.2 is not of marriageable age, however, admittedly, he is a major. Merely because of the fact that petitioner No.2 is not of a marriageable age the petitioners cannot possibly be denied enforcement of their fundamental rights as envisaged under Article 21 of the Constitution of India. The petitioners, both being major, have decided to live together in a live-in relationship and there possibly may not be any legally justifiable reason for the respondents to object to the same.”

The family is the natural and fundamental unit of society and is entitled to protection by society and the State. The Constitution guarantees to every citizen, the right to life. This being a right that cannot be taken away except as per procedure established by law. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to make decisions on matters central to the pursuit of happiness. The right to marry a

person of one's choice is integral to Article 21 of the Constitution. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the liberty of each individual to pursue a way of life, which she or he seeks to adhere.

This Court in **“Priyapreet Kaur and another v. State of Punjab and Others”**, CRWP- 10828-2020, decided on 23.12.2020, wherein the petitioners, who were 18 and 19 years old, the boy not being of legally marriageable age has observed thus::

“The petitioners are seeking protection of their life and liberty as envisaged under Article 21 of the Constitution of India. Article 21 of the Constitution of India provides for protection of life and personal liberty and further lays down that no person shall be deprived of his or her personal liberty except as per the procedure established by law. No doubt petitioner No.2 is not of marriageable age, however, admittedly, he is a major. Merely because of the fact that petitioner No.2 is not of a marriageable age the petitioners cannot possibly be denied enforcement of their fundamental rights as envisaged under Article 21 of the Constitution of India. The petitioners, both being major, have decided to live together in a live-in relationship and there possibly may not be any legally justifiable reason for the respondents to object to the same.

In view of the above and without expressing any opinion with regard to the veracity of the contents of the petition and the submissions made by learned counsel for the petitioners, the Senior Superintendent of Police, Fatehgarh Sahib, Punjab (respondent No.2) is directed to decide the representation dated 20.12.2020 (Annexure P-3) and take necessary action as per law.

The issue as to whether the marriage is must for providing protection to a couple 'live-in relationship', keeping in view the fundamental rights ensured under Article 21 of the Constitution of India, has been considered by this Court in **CRWP-4521-2021** titled as **“Pardeep Singh and another vs. State of Haryana and others”** decided on 18.5.2021; **CRWP-8081-**

2021 titled as “**Goutam Kumar and another vs. State of Punjab and others**” decided on 26.8.2021 and also the Division Bench in **LPA 769-2021** titled as “**Ishrat Bano and another vs. State of Punjab and others**” decided on 3.9.2021 and in **LPA 1678-2014** titled as “**Rajwinder Kaur and another vs. State of Punjab and others**” decided on 9.10.2014.

This Court in **Pardeep Singh's case (supra)** while granting protection to the petitioners therein where they were residing in live-in relationship, has held as under:

“The Constitution of India is the Supreme Law of the land. Right to life and liberty is enshrined therein and is treated as a basic feature. The said right includes the right of an individual to full development of his/her potential in accordance with his/her choice and wish and for such purpose, he/she is entitled to choose a partner of his/her choice. The individual also has the right to formalize the relationship with the partner through marriage or to adopt the non-formal approach of a live-in relationship. The concept of live-in-relationships has crept into our society from western nations and initially, found acceptance in the metropolitan cities, probably because, individuals felt that formalization of a relationship through marriage was not necessary for complete fulfillment. Education played a great role in development of this concept. Slowly, the concept has percolated into small towns and villages also as is evident from this petition. This shows that social acceptance for live-in-relationships is on the increase. In law, such a relationship is not prohibited nor does it amount to commission of any offence and thus, in my considered view such persons are entitled to equal protection of laws as any other citizen of the country. The law postulates that the life and liberty of every individual is precious and must be protected irrespective of individual views.

Let us examine the issue from another view-point. The Constitutional Courts grant protection to couples, who have married against the wishes of their respective parents. They seek protection of life and liberty from their parents and family members, who disapprove of the alliance. An identical situation exists where the couple has entered into a live-in-relationship. The only difference is that the relationship is not universally accepted. Would that make any difference ? In my considered opinion, it would not. The couple fears for their safety from relatives in both situations and not from the society. They are thus, entitled to the same relief. No citizen can be permitted to take law in his own hands in a country governed by Rule of Law.

The petition is accordingly, disposed of with direction to respondent No.2 to consider the representation dated 9.5.2021 (Annexure P3) and to provide appropriate protection, if found necessary. It shall be ensured that no harm comes either to the lives or liberty of the petitioners.”

In **Rajwinder Kaur's case (supra)**, the Division Bench of this Court has held thus:-

“We have no reason to doubt that the fundamental right to life and liberty is so sacrosanct and stands at such a high pedestal that it must be protected even in the absence of an incident like solemnization of a valid marriage between the parties. While the appellants might be required to satisfy an appropriate forum regarding the validity of their marriage but even in the absence of such validation, the State is obligated to protect their life and liberty. We, thus, modify the order passed by the learned Single Judge and dispose of this appeal with a direction to the respondent-police-authorities to ensure that no harm is caused by anyone to the life and liberty of the appellants. The police-authorities shall, however, verify the

age of the appellants and if any further remedial action is required to be taken on such verification, the same shall be taken forthwith.”

For the purpose of adjudicating the present petition, it is sufficient to note that both the petitioners are major. However, even if they are not competent to enter into a wedlock, they have right to live together even outside it. As observed by Hon'ble The Supreme Court of India in Nandakumar (supra), that live in relationship is now recognized by the Legislature itself, which has found its place under the provisions of Protection of Women from Domestic Violence Act, 2005.

In view of the law laid down by Hon'ble the Supreme Court of India in the cases of **Shafin Jahan** (supra), **Nandakumar** (supra), and the judgments of this Court in the cases of **Pardeep Singh** (supra), **Rajwinder Kaur** (supra) and **Priyapreet Kaur** (supra), this Court is of the considered view that the petitioners herein, one of whom is not yet of marriageable age and are presently stated to be in a “Live-in Relationship”, are entitled to the protection qua the life and liberty being sacrosanct, thus stands at the highest pedestal.

Resultantly, in view of the above, as also on account of the limited prayer made by the learned counsel for the petitioners and without delving upon the aspect of the nature of relationship between the petitioners or expressing any opinion thereon the merits of the case, the present petition is disposed of with a direction to respondent No.2-Superintendent of Police, Yamuna Nagar to look into the representation dated 02.01.2023 (Annexure P-3) and if any threat perception is found, to take appropriate action in accordance with law.

It is, however, made clear that if the petitioners are otherwise found to be involved in any other case, in such an eventuality, this order shall not preclude the competent authority from taking appropriate action against the petitioners, that law permits.

(AMAN CHAUDHARY)
JUDGE

January 06, 2023

S.Sharma(syr)

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No