

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

105

CRWP-1249-2023 with
CRM-W-399-2023
Decided on : 10.05.2023

Aalam and another

. . . Petitioners

Versus

State of Haryana and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

PRESENT: Mr. Talim Hussain, Advocate,
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

SANJAY VASHISTH, J. (Oral)

CRM-W-399-2023

1. Learned counsel for the petitioners submits that since main case is listed today itself for hearing, present application seeking pre-ponement of the hearing of main case is rendered infructuous, and the same may be disposed of as having been rendered infructuous.

2. Ordered accordingly.

CRWP-1249-2023

1. Petitioner No. 1 - Aalam, aged 22 years, and petitioner No. 2 - Farida, aged 27 years, have filed the instant petition, under Article 226 of the Constitution of India, for issuance of directions to official respondent Nos. 1 to 3, to protect their lives and liberty, which is stated to be at danger at the hands of private respondent Nos. 4 to 19, who are not happy because, petitioners have solemnized '*nikah*', against their wishes. It is also prayed

that petitioners may neither be harassed nor their married life be interfered

CRWP-1249-2023 (O&M)

- 2 -

with.

2. Further submits that petitioner No. 1 - Aalam is already married to one Bismillah, daughter of Aasu, resident of Village Kheri, District Bharatpur (Rajasthan), and no child was born out of the said wedlock. He further submits that petitioner No. 1-Aalam, is a professional truck driver and is earning monthly income of about Rs. 20,000/-.

2(i). However, on being asked by the Court, no reasonable explanation has been putforth by learned counsel for the petitioners that why said Bismillah, first wife of petitioner No. 1, though being affected, has not been impleaded as a party in the present petition. Learned counsel for the petitioners is also unable to apprise the Court about the age of Bismillah, first wife of petitioner No. 1 - Aalam.

3. Learned counsel for the petitioners further submits that petitioner No. 2 - Farida is also married to one Zaheer, son of Hurmat, resident of Village Langadbas, Police Station Tayra, District Alwar (Rajasthan). Said Zaheer is respondent No.17 in the present petition.

3(i). Further submits that on 13.03.2022, Zaheer (respondent No.17) had divorced petitioner No. 2, by way of oral divorce. For seeking the protection order, it is submitted that, in fact, petitioner No. 1 – Aalam, being a Muslim male, is entitled to perform marriage four times with four different women, if he is able to provide justice to the earlier wife(s).

4. On advance notice, Mr. Vikas Bhardwaj, Assistant Advocate General, Haryana, opposed the said submission of learned counsel for the petitioners, and vehemently argued that no Muslim male is entitled or permitted to marry four times at his whims and fancies, and for the said purpose there has to be express consent from existing wife of such Muslim

CRWP-1249-2023 (O&M)

- 3 -

male. Learned State counsel further submits that neither there is any such averment made in the pleadings of the present petition nor any material has been put forth by learned counsel for the petitioners before this Court while addressing his submissions, showing that petitioner No. 1 – Aalam had obtained any express consent from his first wife – Bismillah, at the time of performing second '*nikah*' with petitioner No. 2 - Farida. It is, thus, prayed, that this petition is liable to be dismissed being devoid of merit.

5. In relation to four marriages by Muslim males during subsistence of earlier marriage(s), this Court put a specific question to learned counsel for the petitioners to assist this Court by citing any law, statute, judgments of Hon'ble the Supreme Court or High Courts, or the custom, if any, followed worldwide in other countries where Mohammedans are residing, to which he is unable to give any answer, rather, expressed his helplessness. Thus, this Court is not inclined to pass any protection order, which may be construed against the existing statutory provisions of this country.

6. When this Court was inclined to afford an opportunity to the learned counsel for the petitioners to assist the Court on this issue, after doing some research work on the subject, learned counsel for the petitioners flatly refused for the same, and insisted that this petition be decided by passing any order whatsoever.

7. This Court cannot ignore the aspect that such petitions are filed by the petitioners under the garb of seeking protection, portraying threat perception to their lives and liberty, but with an actual motive to get approval of their illegal relations, under the seal of the Court order, passed in exercise of power enshrined under Article 226 of the Constitution of India,

CRWP-1249-2023 (O&M)

- 4 -

without there being any instance of actual threat to their lives or liberty.

8. In the present petition, petitioner No. 1 - Aalam has failed to satisfy this Court that what kind of justice he is providing to his first wife - Bismillah. Person who does not do equity with others and even to the life companion, cannot approach the Court to seek approval of his relation under the umbrella of Article 21 of the Constitution of India.

9. Next question asked from the learned counsel for the petitioners is to apprise the Court of any specific instance of actual threat to the petitioners' lives by any specific person on any specific day and time and place, but on this account also he is unable to satisfy this Court.

10. This Court has also gone through the averments made in the petition as well as representation dated 06.02.2023 (Annexure P-4), which has been addressed to the Senior Superintendent of Police, Nuh, District Nuh, and appended with this petition. The answer to said question is also not there. The relevant part of the representation is reproduced hereunder:-

“Respected Sir,

That both the applicants are major and have attained the age of majority and living with each other each other after performing marriage on dated 05.02.2023 with their own free will and sweet consent but against the wishes of the above said persons who are the family members and relatives of the applicants. That the above said persons are strictly opposing marital life of the applicants and are extending threats to the applicants that they will be eliminated for the sake of family prestige. Both the applicants belong to same area and different gotras and there is unacceptability on the account difference of gotras which might lead towards honor killing of the applicants. Now even aforesaid are continuously threatening to the applicants.

That, the applicants are hiding from one place to another and also apprehension of implicating in some false criminal case at the hands of the police on the asking of the above said persons.

CRWP-1249-2023 (O&M)

- 5 -

Therefore, it is requested that the live of the applicants may be protected which is endangered at the hands of the above said persons. It is bounden duty of state to provide protection of life and liberty to its citizens. Kindly provide protection of life and liberty to the applicants.

Thanks in anticipation.

Applicants

Dated: 06.02.2023”

11. In conspectus of the above, this Court do not find any merit in this petition, and is of the view that no prayer for grant of police protection unnecessarily, without there being any actual threat to the lives of the petitioners, can be entertained. Rather the pleadings raised in the petition and the prayer made in the representation are incomplete, formal in nature and appears to have been made only for the purpose of seeking approval of the relation and the seal of the Court in the shape of protection order passed in a petition filed under Article 226 of the Constitution of India.

12. Accordingly, this petition is dismissed being devoid of merit.

(SANJAY VASHISTH)
JUDGE

May 10, 2023

k.nain / Pkapoor

Whether Speaking/Reasoned:

YES / NO

Whether Reportable:

YES / NO