

Sr. No. 133
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CRWP-7908-2023 (O&M)
Date of Decision: 12.10.2023

Kanti and another
Vs.
State of Haryana and others

...Petitioners
...Respondents

CORAM: HON’BLE MR. JUSTICE ARUN MONGA

Present: Ms. Rosi, Advocate,
for the petitioners.

Ms. Svaneel Jaswal, Additional A.G., Haryana.

ARUN MONGA, J.

In 2012, all of 16 years old, Kanti was married off by her parents. Then a minor herself, she gave birth to a daughter shortly after the marriage. Her daughter is currently 11 years old. Over the years, she became a mother to two sons as well, aged 5 and 3, respectively. Her marital life, however, was far from blissful. Her husband, often inebriated/intoxicated, would subject her to frequent physical abuse. Whenever she sought help from her parents, they refused to support her, insisting that her place was with her husband. Repeatedly turned away by her parents, Kanti found herself trapped in an abusive marriage. Unable to endure the physical and mental torment any longer, she fled her matrimonial home, seeking refuge with petitioner no.2 with whom she had become friendly over a period of time. She has been living with petitioner no.2 for the past year and a half. However, she is now terrified of becoming a victim of honor killing at the hands of her parents, husband, and in-laws. She is compelled to seek indulgence of this Court for protection and safety of her life and her partner/petitioner no.2.

2. Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the official respondents to protect the life and liberty of petitioners as they apprehend threat at the hands of private respondents No.4 to 9

i.e. husband, parents in law, parents and cousin brother, respectively of petitioner no.1.

3. Succinct facts first. Petitioner no.1 (Kanti) wife of respondent no.4 is stated to be living in a relationship with petitioner no.2 for last one and a half year. Out of wedlock, she has three minor children i.e. one girl child and two boys. She has not taken any divorce from her husband yet. Minors are currently living with their father i.e. respondent No.4.

3.1. It is stated that petitioner No.2 was also married earlier, but he has taken a purported divorce from his wife at societal level (in a *Panchayat*) in the year 2022. One male child was born out of their wedlock, who is currently in custody of his mother.

3.2. Be that as it may, none of the petitioners have thus legally dissolved their earlier respective marriages as of now. In that sense, they are living together in an arrangement, what they have termed as live-in relationship.

3.3. Ever since petitioners have started staying together, private respondents No.4 to 7 have been threatening them with dire consequences. Apprehension is that they may take law into their own hands and even kill both the petitioners by tracing them from wherever they are, who are currently in the hiding.

4. In the circumstances, the petitioners approached respondent No.2 (Superintendent of Police, Nuh) and submitted a representation dated 06.08.2023 (Annexure P-4) seeking to safeguard their life and liberty, but no action is being taken on the same. Hence, the instant petition.

5. Notice of motion.

6. On advance service of copy of petition, Ms. Svaneel Jaswal, learned Additional A.G., appears and accepts notice on behalf of respondent-State of Haryana. She submits that she 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.

7. Given the nature of order being passed, there is no necessity to seek any return by the official respondents or even to serve the private respondents No.4 to 7.

8. Heard learned counsel for the parties.

9. The key issue at hand is not the legality of the petitioners' relationship, *qua* which they may be liable for civil as well as criminal consequences in accordance with law, but whether they are entitled to protection of their fundamental right under Article 21 of the Constitution. Must their right to live be upheld, irrespective of their self-proclaimed live in relationship, which on the face of it appears to be adulterous? Pertinently, the couple herein fears for their safety not from society or State, but from the family members of petitioner no. 1. The answer to the aforesaid questions, in the words of Lord J. Denning, simply is, "*Be you ever so high, the law is above you*". In a nation governed by the Rule of Law, as a citizen you must not and cannot take the law unto your own hands.

10. Adjudication thus warranted now is, whether an appropriate direction or order ought to be passed to allay the apprehensions of the petitioners to save their lives. Must they pay with their lives for defying the matrimonial or other relevant penal laws ? For, most certainly, death is not the penalty for such a defiance, that too at the hands of the family members ! Constitutional Fundamental Right under Article 21 of Constitution of India stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless of the legitimacy of relationship and/or even the absence of any marriage between the parties. There may be situations when two consenting adults, already married, but are living together without taking divorce; or not earlier married though adults but not of marriageable age; or being of marriageable age though not married but living together in courtship before they

decide to get married or simply want to be live in partners without marriage or any other likewise situation. Appropriate laws exist for dealing with cases arising out of such defiance of the matrimonial or other relevant penal laws, as the case may be, and the law shall take its own course, which *inter alia* includes criminal prosecution, if there is any offence made out.

11. It is the bounden duty of the State, as per the Constitutional obligations casted upon it, to protect the life and liberty of every citizen. Right to human life is to be treated on highest pedestal and cannot be taken away except in accordance with law. Irrespective of the nature of their relationship, the police force being the protective arm of the State is under a duty to protect the citizens' life. Accordingly, petitioners herein cannot also be deprived of their said fundamental right.

12. As an upshot, without commenting upon the legality of the relationship between the petitioners or expressing any opinion on the merits of their apprehensions, petition is disposed of with a direction to the Superintendent of Police, Nuh to verify/get verified, as he may like, the contents of the petition, particularly the threat perception of the petitioners, and thereafter, proceed in accordance with law and, if deemed fit, provide necessary protection *qua* their life and liberty.

13. Before parting, since this court is inundated with such matters being filed by couples living together, seeking indulgence to protect their lives due to inaction of the police officials, it is considered desirable that basic guidelines are framed to sensitize the police officials who remain mute after receiving representations from the fearful couples. It seems that police officers/officials' subjective view of the moral and ethical considerations of a couple's live-in relationship over-shadow and prevail over the duty to protect the citizens' life leading to inaction on their part. That in turn unnecessarily drives the affected person/s to the Court for seeking relief. Accordingly, few basic guidelines, though

at the risk of repetition, are being laid down hereunder, which should be kept in mind and followed by the police officers/officials while dealing with such cases :-

(i). Legality of relationship vs. Fundamental Rights:

- a. Striking a balance between the legality of a couple's live-in relationship and their entitlement to protection under Article 21 of the Indian Constitution, which guarantees the right to life and personal liberty, is essential.
- b. Police officers/officials' subjective moral and ethical considerations regarding a couple's live-in relationship should not overshadow their duty to protect citizens' lives. Personal choices, even if in violation of societal norms or other laws, should be shielded by constitutional provisions. Let the law over and couples face consequences for defying matrimonial or other relevant penal laws.

(ii). Safeguarding Against Family Threats:

- a. Addressing a couple's safety concerns, not from society or the State but from their own family members, is crucial. The significance of familial pressures and potential harm in such situations should not be underestimated, given the past statistics of honor killings.
- b. Family dynamics and societal expectations play a complex role in limiting personal choices, underscoring the need for legal protection against potential harm or honor-based violence couples may face from their families.

(iii). Upholding the Rule of Law:

- a. In a country governed by the Rule of Law, individuals, regardless of their status, must refrain from taking matters into their own hands.
- b. The Rule of Law is a foundational principle in democratic societies, requiring equal application of the law to all citizens, regardless of the legality or legitimacy of their relationships. Justice should be administered through legal channels, not by vigilante or extrajudicial means.

(iv). Safeguarding Fundamental Rights:

- a. Regardless of the nature or legitimacy of a relationship, constitutional fundamental rights, such as the right to life and personal liberty is sacrosanct, must be protected/ upheld.
- b. Protecting fundamental rights is a primary aspect of any democratic constitution, independent of societal or legal norms concerning relationships. Fundamental rights cannot be deprived without due process.

(v). The State's Responsibility:

- a. The State's duty/responsibility to protect its citizens is a fundamental principle of governance.
- b. State’s duty extends to safeguard individuals from harm, resulting from their personal choices.

14. To sum up, a balance has to be struck between ethical and legal questions about personal choices, fundamental rights, familial pressures and the role of the State. Life and individual rights in cases of live-in relationships, in deserving cases, must be protected from potential harm threatened by family members. Same shall ensure and reaffirm the importance of upholding the Rule of Law and the fundamental principles of democratic governance.

15. Registry of this Court to circulate copy of the instant order to the Secretaries, Home Department and the Directors Generals of Police of Haryana, Punjab and Chandigarh for onward circulation to every SHO of the police stations in their respective States. Compliance report be also filed before this Court by the Registry.

(ARUN MONGA)
JUDGE

12.10.2023
vandana

Whether speaking/reasoned:Yes/No

Whether reportable:Yes/No