

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

109+233

CRWP-8450-2023 (O&M)

Date of Decision : November 09, 2023

HARJIT SINGH AND ANOTHER

-Petitioners

V/S

STATE OF PUNJAB AND OTHERS

-Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Sunil Kumar Pandey, Advocate
for the petitioners.

Ms. Vasundhara Dalal, Addl. P.P., U.T. Chandigarh.

Mr. Raj Kumar Garg, Advocate
for the respondents No.4 to 6.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, as filed under Article 226 read with Article 21 of the Constitution of India, the petitioners, who are in a 'live-in relationship', have sought issuance of directions upon the respondents No.1 to 3, to ensure protection of their lives and liberty at the hands of respondents No.4 to 6, and, also to restrain the said respondents from harassing the petitioners or interfering in their personal life.

2. The petitioners, in their asking for the relief (supra), have made submissions that though the petitioner No.1 has attained the age of majority, as he was born on 08.09.2003, however, the petitioner No.2 has not yet attained majority, as she was born on 08.10.2007. The petitioners have appended their respective Aadhar Cards as Annexures P-1 and P-2 with the instant petition. Since the petitioners, who developed feelings and love for each other, have not yet attained the minimum age, as prescribed by statute,

for solemnizing marriage, therefore, they have been living in ‘live-in relationship’. Though their relationship has been accepted by the family members of petitioner No.1, however, it has caused grievance to the family members of petitioner No.2. As a result of such grievance, the family members of petitioner No.2 threatened to kill the petitioners, which has made them apprehensive of danger to their lives and liberty and resultantly, has constrained them to approach this Court, to seek protection of their lives and liberty.

3. It is further averred in the petition, that consequent upon threats being extended by the family members of petitioner No.2, the petitioners made a representation dated 23.08.2023 (Annexure P-3) to the respondents no.2, expressing therein, their apprehension qua danger to their lives at the hands of the private respondents.

4. A Co-ordinate Bench of this Court had, while issuing notice of motion on 28.08.2023, considering the fact that the petitioner No.2 is minor and taking into consideration her safety, directed the learned counsel representing U.T. Chandigarh to keep her in “Ashiana”, Sector 15, U.T. Chandigarh, till subsequent date of hearing.

5. On the subsequent date of hearing, i.e. 06.09.2023, an intimation was made to this Court qua registration of FIR against the petitioner No.1 by the private respondents. On that date, this Court had directed the petitioner No.2 and the private respondents to appear before the Child Welfare Committee, U.T. Chandigarh. Accordingly, the Child Welfare Committee though made earnest efforts and interacted with the petitioner No.2, however, she refused to go with her parents or any of her relatives.

6. Today, the petitioner No.2 has been produced before this Court,

whereupon, this Court also had an occasion to interact with her. This Court also made a detailed interaction with the petitioner No.2 and upon an explicit query being put to her, as to whether she is ready and willing to go with her parents, she returned a dis-affirmative response stating that she does not want to go either with her parents or any other relative. She was adamant and consistent on her stand to go with the petitioner No.1. Moreover, she also presented before this Court a self written application, thereby seeking permission to call the parents of petitioner No.1.

7. It is also informed to this Court that the petitioner No.2 is studying in 10th standard through distance learning mode and she is being provided the requisite study material and assistance by the officials of “Ashiana”, Sector 15, U.T. Chandigarh. Even the petitioner No.2, on being further asked by this Court, as to whether she faced any problem during her stay at “Ashiana”, she did not make complain, rather expressed her satisfaction qua the services rendered by the officials of “Ashiana”.

8. The gist of the interaction, as made by this Court with the petitioner No.2, is that, the petitioner No.2 is resolute not to join the company of her parents, rather is adamant to join the company of petitioner No.1.

9. To claim custody of the petitioner No.2, the learned counsel for the respondents No.4 to 6 though has placed on record a copy of the petition, as instituted under Section 6 of the Hindu Minority and Guardianship Act, 1956, before the learned Principal Judge, Family Court, Camp at Mukerian, whereby, the custody of petitioner No.2 has been claimed by her parents. However, the petition (supra) is yet subjudice before the learned Principal Judge concerned and its hearing is fixed for 18.01.2024.

10. Therefore, until a final decision is made on the petition (supra), which is yet subjudice before the learned Principal Judge concerned, this Court does not deem it appropriate to meddle in the subjudice custody proceedings and refrains from granting the asked for custody of the petitioner No.2 to her parents.

11. Insofar as the prayer of petitioner No.2 is concerned, inasmuch as, to send her with petitioner No.1, the said prayer is declined. The principal reason for declining the prayer is that an FIR under Sections 363, 366-A and 120-B of the IPC, regarding abduction of petitioner No.2 from lawful custody of her parents, has been registered against the petitioner No.1, at the instance of the parents of petitioner No.2.

12. In view of the above circumstances, to ensure safety and well-being of the petitioner No.2, this Court is left with no other alternative, except to send her to “Ashiana”, Sector 15, U.T. Chandigarh.

13. At this stage, the learned counsel representing U.T. Chandigarh has made a prayer that since the petitioner No.2 is the victim in the FIR, as stands registered against the petitioner No.1, therefore, a direction be made upon the officials of “Ashiana”, Sector 15, U.T. Chandigarh to ensure her presence, as and when required, before the officials of Punjab Police, to conclude the investigation. She further submits that for arriving at a just and appropriate decision qua custody of petitioner No.2, her presence is also required before the learned Principal Judge concerned, who is seized of the custody petition (supra).

14. Considering the hereinabove made genuine submissions, a direction is issued to the official(s) concerned of “Ashiana”, Sector 15, U.T. Chandigarh to ensure production of the petitioner No.2 before the police

official(s) concerned and the learned court concerned, as and when required.

15. To the considered mind of this Court, no further intervention is called for, at this stage. However, considering the sensitivity of the present matter, especially the future and well being of the petitioner No.2, a direction is also made upon the learned Principal Judge concerned to make every possible efforts for expeditiously deciding the custody petition (supra), as is pending before him, preferably within four months from today. It is expected from the learned Principal Judge concerned that he would take into consideration all the relevant factors, especially the paramountcy of the welfare of the petitioner No.2, while making a decision on the subjudice petition (supra).

16. Disposed of accordingly.

17. The Registry of this Court is directed to forthwith send a copy of this order to the responsible official(s) of “Ashiana”, Sector 15, U.T. Chandigarh, and, to the learned Principal Judge, Family Court, Camp at Mukerian, for its compliance.

November 09, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No