

120

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

**CRWP-1469-2024
DECIDED ON: 15.02.2024**

AMAN RANI AND ANR**.....PETITIONERS****VERSUS****STATE OF HARYANA AND ORS.****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr.Akshit Mehta , Advocate
for the petitioners.

Mr. Rajiv Verma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents No. 2 to 4 to protect the life and liberty of the petitioners at the hands of respondents No.5 to 7 by restraining them from interfering in their personal, peaceful life and liberty.

The factual matrix of the case unfolds as Petitioner no.1 aged about 20 years is major whose marriage was fixed with Vinod R/o Rajpura Hundan, District Bikaner, Rajasthan for 26.02.2024 against the wishes of Petitioner no.1 which she had shared with her friend Petitioner no.2 aged about 17 yrs 8 months , stating that her family members are threatening her to eliminate in case she refuses to marry Vinod. Thereafter, Petitioner no.1 to save her life left the house on 08.02.2024 and took shelter in the house of petitioner no.2.

Counsel for the petitioners contend that the petitioners gave an application (Annexure P-5) to respondent no.2 and 3 to take action against the private respondents and further prayed to protect the life and liberty of the petitioners but no action was taken by them. He further categorically contends that the petitioners have strong apprehension to be eliminated in the hands of respondent no.5(father of the petitioner no.1), respondent no.6(mother of petitioner no.1), respondent no.7(brother in law of petitioner no.1).

Counsel for the petitioners vehemently argues by stressing upon the adoption of modern culture in India, that with westernization popping into every house, the narrow mindedness, casteism, religion, wealth are still deep rooted in our culture which is hampering the persons right to life and personal liberty as enshrined under Article 21 of the Constitution of India.

He further argues while referring ***Lata Singh vs State of U.P & Another 2006 (5) SCC 475*** that Under Section 5 OF Hindu Marriage Act,1955 “there is no bar to an inter caste marriage under the Hindu Marriage Act or any other law.”The relevant para is stated as under:-

“ The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes.

If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism."

Heard.

The present petition has come up to this court wherein petitioner no.1 is major and petitioner no.2 is minor are seeking protection for their life and liberty at the hands of respondent no.5 to 7 who are allegedly extending threats to eliminate their lives in case petitioner no.2 does not send back petitioner no.1 back to her home.

The counsel for the petitioner has relied on the judgment of the Apex court in ***Nagaiah and another vs Smt.Chowdamma(dead)by Lrs and another Civil Appeal No. 22969 of 2017*** wherein it has been held that:-

"16. To sum up, instituting a suit on behalf of minor by the next friend or to represent a minor defendant in suit by a guardian

ad litem is a timetested procedure which is in place to protect the interests of the minor in civil litigation. The only practical difference between a “next friend” and a “guardian ad litem” is that the next friend is a person who represents a minor who commences a lawsuit; guardian ad litem is a person appointed by the court to represent a minor who has been a defendant in the suit. Before a minor commences suit, a conscious decision is made concerning the deserving adult(next friend) through whom the suit will be instituted. The guardian ad litem is appointed by court and whereas the next friend is not. The next friend and the guardian ad litem possess similar powers and responsibilities. Both are subject to control by the court and may be removed by the court if the best interest of the minor so requires.”

Having gone through the above stated judgment, there is no dispute to the proposition that Article 21 of the Constitution of India is sacrosanct and it is imperative upon the State to take adequate measures to protect the life and liberty of each person, however, there are statutory safeguards required under the statutory scheme to protect the interest of a minor and that once such a fact comes to the notice of the Court, it becomes incumbent upon the Court in its capacity as parents patriae to examine what is in the best interest of the minor. A minor is not perceived in law to be able to comprehend consequences of his/her acts what is in his/her best interest and it is for the said reason that a minor is to be represented through guardian, who is recognized by the statute or by the Court.

As regards to the question of maintainability of this petition, this court hold view that the judgment relied upon by the counsel for the petitioner in **Nagaiah**(supra) does not find any relevance here as the same discusses the importance of next friend & Guardian in a law suit only which

is certainly different from writ in the nature of Mandamus, therefore, the petition stands dismissed on the ground maintainability.

In the light of above stated facts and circumstances, the present petition stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

15.02.2024
anuradha

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>