



CRWP-5685-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRWP-5685-2024
Date of decision : 19.06.2024

Babita and another

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr. Vikas Gupta, Advocate
for the petitioners.

Mr.N.S. Diwana, Sr.DAG, Punjab.

VIKAS BAHL, J.(ORAL)

1. The present Criminal Writ Petition has been filed under Article 226/227 of the Constitution of India for directing respondents no.2 and 3 to protect the life and liberty of the petitioners.

2. Learned counsel for the petitioners has submitted that petitioner no.1 was born on 01.01.1992 and has referred to her Aadhar Card (at page 22 of the paper book) and petitioner no.2 was born on 01.01.1991 and has referred to his Aadhar Card (at page 23 of the paper book) and has submitted that both the petitioners are major and has further submitted that the petitioners have married on 03.06.2024 and regarding the same, learned counsel for petitioners has referred to marriage certificate as well as photographs (Annexures P-1 and P-2). It is submitted that petitioner no.1

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was earlier married to one Rohit Jain and out of the said wedlock, no child was born and due to some temperamental differences, panchayati divorce had taken place on 10.10.2021. It is further submitted that the petitioners have given a representation dated 05.06.2024 (Annexure P-3) to respondent No.2 apprehending danger to their life. In support of the argument that even in case there is no legal divorce, then also protection should be granted to the petitioners in case there are reasonable apprehension to their life and liberty. Learned counsel for the petitioners has relied upon the judgment of the Division Bench of this Court dated 03.09.2021 passed in **LPA-769-2021** titled as “***Ishrat Bano and another vs. State of Punjab and others***”.

3. Notice of motion to respondent Nos.1 to 3 only.

4. On advance notice, Mr.N.S. Diwana, Sr.DAG, Punjab, appears and accepts notice on behalf of respondent Nos.1 to 3. He has stated that he has no objection in case the respondent No.2-Commissioner of Police, Amritsar, is directed to consider the representation dated 05.06.2024 (Annexure P-3) on the limited aspect of protection of life and liberty of the petitioners and to take appropriate action, in accordance with law.

5. This Court has heard the learned counsel for the parties and has perused the paper book.

6. The issue, which arises in the present case, is similar to the issue which was adjudicated by the Division Bench of this Court in the case of ***Ishrat Bano*** (supra). Ishrat Bano (petitioner therein) had filed Criminal Writ Petition no.7903 of 2021 which was dismissed by the learned Single Judge of this Court. The relevant portion of the order passed by the learned



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Single Judge dated 01.09.2021 is reproduced hereinbelow:-

“Prayer in this writ petition is for issuance of a direction to the official respondents to protect the life and liberty of the petitioners at the hands of respondents No.5 to 9.

Counsel for the petitioners has argued that the petitioners have performed the marriage and are apprehending threat to their life and liberty at the hands of respondents No.5 to 9. It is further submitted that previously, the petitioner No.2 was married to one Alia Hasan and the marriage was annulled by way of divorce documents dated 26.07.2018, 27.08.2018 and 27.09.2018 i.e. vide 03 divorce deeds executed by petitioner No.2 – Aslam Khan himself.

A perusal of these 03 divorce deeds relied upon by the petitioners reveals that these are one sided documents prepared by petitioner No.2 and there are two common witnesses namely Shehnaz Ali and Feroz Khan. There is no signature of the first wife of petitioner No.2 namely Alia Hasan, giving her consent to such divorce. Even otherwise, a perusal of these divorce deeds further reveal that the marriage of petitioner No.2 was performed with Alia Hasan on 06.07.2013 and out of the said wedlock two daughters namely Sohalia Aslam and Amima Aslam were born, who are alive and residing with the first wife of petitioner No.2 i.e. Alia Hasan.

Counsel for the petitioners has further argued that after this one sided customary divorce, the petitioner No.2 has now performed marriage with petitioner No.1 on 20.08.2021. The Co-ordinate Bench while taking up this petition has directed the petitioners to inform the Court as to how much amount, the petitioner No.2 is ready to give to his earlier wife to enable her to maintain herself.

Despite taking 02 dates, no such proposal has come.

This Court cannot ignore the fact that the Court being legal guardian of the 02 minor girls, who are living at the mercy of their mother – Alia Hasan, as the petitioner No.2 is not only claiming to have divorced his first wife Alia Hasan but he has also refused to maintain and take care of the upbringing of his 02 minor daughters aged 4½ years and 02 years.



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On the face of it, the present petition is nothing but a ploy to seek a seal of this Court regarding the lustful and adulterous life of petitioner No.2 with petitioner No.1 and the Court cannot be a party to the same. The arguments of petitioner No.2 that he has a right to perform second marriage under Muslim Law is misconceived as this Court instead of taking an academic view is more concerned about the welfare of 02 minor girls as it is clear that petitioner No.2 has intentionally failed to maintain his first wife and 02 minor daughters.

Accordingly, the present petition is dismissed with Rs.1,00,000/- costs to be paid to Alia Hasan.”

A perusal of above would show that since the Court had primarily observed that the divorce documents were one sided documents, thus, prima-facie it appeared that the divorce was not legal. The matter was taken up in appeal and the Division Bench of this Court vide judgment dated 03.09.2021 passed in **LPA-769-2021** titled as **“Ishrat Bano and another vs. State of Punjab and others”** held as under:-

“The aspect which we are considering and dealing with is with regard to the threat to the life and liberty to the appellants as has been asserted by them. No doubt, in case a criminal case is registered against any of the parties, the law should take its own course, however, the life and liberty of any person who has approached the Court with such a grievance need to be taken care of and the protection be provided as permissible in law. No person can be permitted or allowed to take law in his hands and therefore, keeping in view the said aspect, we dispose of the present appeal by observing that the Senior Superintendent of Police, Maler Kotla, shall take into consideration the representation dated 17.08.2021 (Annexure P-5) submitted by the appellants and if some substance is found therein, take appropriate steps in accordance with law to ensure that the life and liberty is not jeopardized of the appellants at the hands of the private respondents. This direction shall not be construed in any manner to restrain the official respondents to proceed against the appellants in case there is some



criminal case registered against them. The law shall take its own course and it shall be open to the authorities/investigating agency to proceed against the appellants, if required in law and in accordance thereto.”

7. Thus, the Division Bench after considering the aspect of protection of life and liberty being of paramount consideration and without getting into the issue as to whether the relationship between the parties was legal or not, however, granted them protection of life and liberty.

8. In view of the above, it goes without saying that protection of life and liberty is a basic feature of the Constitution of India. Every person has the right to live his / her life with a person of his / her choice. At any rate, whenever this Court, prima-facie, is satisfied that on account of some relatives/ persons being unhappy with the relationship between the petitioners could cause harm to the life and liberty of the petitioners, then in such circumstances, the Courts are required to pass necessary directions for their protection.

9. Keeping in view the above said facts and circumstances and without commenting upon the legality of the relationship or expressing any opinion on merits of the case, this Court deems it appropriate to dispose of the present petition with a direction to respondent no.2 to consider the representation dated 05.06.2024 (Annexure P-3) and to assess the threat perception to the petitioners and after considering the same, respondent no.2 shall take appropriate action in accordance with law.

10. Accordingly, the petition stands disposed of with above said directions.



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11. It is, however, clarified that this order shall not debar the State from proceeding against the petitioners, if involved in any other case.

(VIKAS BAHL)
JUDGE

June 19, 2024
Davinder Kumar

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