

Court No. - 50

Case :- WRIT - C No. - 20946 of 2023

Petitioner :- Roshani And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Mohd Hamid

Counsel for Respondent :- C.S.C.

Hon'ble Ram Manohar Narayan Mishra,J.

1. Instant writ petition under Article 226 of the Constitution has been filed by the petitioners with the following prayer:-

i) issue a writ order or direction in the nature of mandamus commanding and directing the respondent no. 2 and 3 to protect and safe-guard the life and liberty of the petitioners as well as directing to the respondent no. 4 to not to interfere in the peaceful life of the petitioners without any authority of law as such they are living as live-in relationship as husband and wife.

2. Heard learned counsel for the petitioners, Sri Mohd Hamid, learned Standing Counsel for State-respondents, Sri Hasan Abbas and perused the record.

3. Learned counsel for the petitioners submitted that the petitioners are presently living in live-in relationship out of free will and choice after attaining the age of majority. The date of birth of petitioner No. 1 is mentioned as 08.03.2000 in her Class VIII Transfer Certificate as well as in her Voter I.D. Card, the date of birth of petitioner No. 2 is mentioned as 01.01.1998 in his Aadhar Card. They have right to live together without interference of any person being consenting adults. They have filed joint affidavit in support of their contentions made in writ petition. Petitioner No. 2 is doing a private job at District- Saharanpur and earns around Rs. 15,000/- per month and is able to maintain petitioner No. 1. The petitioner No. 1 has taken a categorical stand that she had left her matrimonial home with petitioner No. 2 out of her free will. Petitioner No. 1 was previously married with one Rahul son of Chhetrapal resident of Roorkee, District- Haridwar, State of Uttarakand and they got their married dissolved through mutual compromise on 16.09.2022 executed before notary public at Saharanpur and since then, petitioner No. 1 is not concerned with her previous husband in any manner. It is stated that they have

apprehension that private respondent can eliminate them for the honour of their family. In case this Court does not grant them protection, their lives may be endangered. Petitioner No.1 had moved an application before respondent No. 2- S.P., Saharanpur, seeking protection for herself and petitioner No. 2, but no action has been taken.

4. *Per contra*, learned Standing counsel submitted that this is admitted fact that the marriage of petitioner No. 1 with her previous husband Rahul has not been dissolved by orders of any competent court and the mode and manner of dissolution of marriage of petitioner No. 1 and her previous husband cannot have sanctity of law as both of them belong to Hindu community.

5. Learned standing counsel also placed reliance on judgment of Division Bench of this Court in **Asha Devi Vs. State of U.P.** in Writ C. No. 18743 of 2020 decided on 01.12.2020. Paragraphs Nos. 11, 17, 18 and 21 of same is reproduced below:

*11. Live-in-relationship is a relationship which has not been socially accepted in India, unlike many other countries. [In Lata Singh v. State of U.P.](#)¹ and in [Indra Sarma Vs. V. K.V. Sarma](#)² (paras 40, 42, 43 & 53) Hon'ble Supreme Court observed that live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. In *D. Velusamy Vs. D Patchaiammal*³ (paras 31 & 32) Hon'ble Supreme Court explained the phrase "relationship in the nature of marriage" as under :-*

"31. In our opinion a "relationship in the nature of marriage" is akin to a common law marriage. Common law marriages require that although not being formally married :-

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(see 'Common Law Marriage' in Wikipedia on Google) In our opinion a 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

32. In our opinion not all live in relationships will amount to a relationship

in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'."

17. [Article 226](#) of the Constitution of India empowers High Court to issue directions, orders or writs in the nature of habeas corpus, mandamus, prohibitor, quo warranto and certiorari or any of them. Such directions, orders or writs may be issued for the enforcement of fundamental rights or for any other purpose. The jurisdiction under [Article 226](#) is equitable and discretionary.

18. It is settled law that writ of mandamus can be issued if the petitioner has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. Similar view has also been taken by Hon'ble Supreme Court in [Kalyan Singh vs. State of U.P.](#)¹³. Applying the principles of issuance of writ of mandamus on the facts of the present case, we find that the petitioners have no legal right for protection on the facts of the present case inasmuch as such the protection as being asked, may amount to protection against commission of offence under [Section 494/495](#) I.P.C. It is well settled law that writ of mandamus can not be issued contrary to law or to defeat a statutory provision including penal provision. The petitioners do not have legally protected and judicially enforceable subsisting right to ask for mandamus.

21. The discussion and findings as recorded in foregoing paragraphs are briefly summarized as under:-

(i) A "relationship in the nature of marriage" is akin to a common law marriage. Common law marriages require that although not being formally married :-

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

(ii) A 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in [Section 2\(s\)](#) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

(iii) Following relationship have not being recognised or approved as live-in-relationship or relationship in the nature of marriage. This list is not exhaustive but merely illustrative :-

(a) Concubine can not maintain relationship in the nature of marriage.

(b) Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one's husband or wife, cannot be said to be a relationship in the nature of marriage. Polygamy is also a criminal offence under Sections 494 & 495 I.P.C.

(c) Till a decree of divorce is passed the marriage subsist. Any other marriage during the subsistence of the first marriage would constitute an offence under [Section 494](#) I.P.C. read with [Section 17](#) of the Hindu Marriage Act, 1955 and the person, inspite of his conversion to some other religion would be liable to be prosecuted for the offence of bigamy

(d) If both the persons are otherwise not qualified to enter into a legal marriage including being unmarried.

(iv) Once the petitioner No.1 is a married woman being wife of one Mahesh Chandra, the act of petitioners particularly the petitioner No.2, may constitute an offence under [Sections 494/495](#) I.P.C. Such a relationship does not fall within the phrase "live-in-relationship" or "relationship in the nature of marriage". The writ petition has been filed by the petitioners for protection from interference by others in their living as husband and wife. If the protection as prayed is granted, it may amount to grant protection against commission of offences under Sections 494/495 I.P.C.

(v) It is settled law that writ of mandamus can be issued if the petitioner has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. Similar view has also been taken by Hon'ble Supreme Court in [Kalyan Singh vs. State of U.P.](#) (supra) and in [Director of Settlement A.P.](#) (supra). Applying the principles of issuance of writ of mandamus on the facts of the present case, we find that the petitioners have no legal right for protection on the facts of the present case inasmuch as such the protection as being asked, may amount to protection against commission of offence under [Section 494/495](#) I.P.C. It is well settled law that writ of mandamus can not be issued contrary to law or to defeat a statutory provision including penal provision. The petitioners do not have legally protected and judicially enforceable subsisting right to ask for mandamus.

6. In the light of facts and situation of present case, although the petitioners are stated to have been living in live-in relationship being consenting adults, admittedly the marriage of petitioner No. 1 with her previous husband has not been dissolved by orders of any competent court and no sanctity can be attached to dissolution of marriage of petitioner No. 1 and her husband by way of mutual agreement executed before notary public. The writ of mandamus as stated above, *It is settled law that writ of mandamus can be issued if the petitioner has a legal right to the performance of a*

legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. We find that petitioners have no legal right for protection in the facts of the present case as marriage of petitioner No. 1 with her previous husband is deemed to be subsisting under eye of law.

7. For all the aforestated reasons, this Court is not inclined to exercise its discretionary jurisdiction, consequently, the writ petition fails and is hereby **dismissed**.

8. However, the petitioners will be at liberty to take recourse of concerned police officials and competent court in case, they apprehend any danger from respondent No. 4 or any other person on account of their relationship; as under law.

Order Date :- 22.8.2023

Nitika Sri.