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(2008) 3 RCR (Cri) 376

Pardeep Kumar Singh v. State of Haryana

PUNJAB AND HARYANA HIGH COURT

BEFORE M.M.S. BEDI, J.

Cr. Misc. No. 30025-M of 2007.

D/d. 30.11.2007.

Pardeep Kumar Singh ... Petitioner

Versus

State of Haryana ... Respondent

JUDGMENT

M.M.S. BEDI, J. — This order will dispose of a bunch of 13 petitions as the common question of law and facts arise in the all the said petitions.

2. Apprehending threat to their life and liberty at the hands of the State authorities i.e. Police on the instance of their family members, a large number of young couples have approached this Court for a direction to the respondents that interference in their married life may be prohibited, taking the shelter of Article 21 of the Constitution of India. Pendency of about 40 petitions for motion hearing by young couples on the cause list of this Court today is indicative of the fact that there has been remarkable change in the last few decades revolutionizing the entire outlook by bringing radical changes in the attitude and approach of the society towards various social practices, calling upon the Courts to consider the scope of the right of life and liberty invoked by the young couples of 'run away marriages' or 'rebellion marriages' performed against the wishes of the other members of the society i.e. their parents. The common features of all the above said petitions are as follows :

- (i) the petitioners claim themselves to be majors and having married recently against the wishes of the parents of one of the spouses;
- (ii) the petitioners in all the cases apprehend threat to their life and liberty at the hands of the police officials;
- (iii) the petitioners have an apprehension that after the arrest of the husband the wife will be taken away by her parents against her wishes or will be harmed in one way or the other;
- (iv) a direction has also been sought for in all the cases for protection of life and liberty at the hands of the private respondents who happen to be the family members of either of the spouses.
- (v) the marriage in all the cases is not registered with any authority but the petitioners are supported by some photographs indicating that some ceremony of marriage has already taken place.
- (vi) it appears that indirectly the petitioners want a sanction or approval of their marriage from the High Court to protect them.
- (vii) there are certain instances of inter-caste marriages which is not acceptable to the society or the family members.

3. The petitioners in all the above said cases have approached the Court on the basis of the few judicial precedents, for instance in *Lata Singh v. State of U.P.*, 2006 (3) RCR (Criminal) 870 : 2006 (3) RCR (Civil) 738 : 2006 (2) Apex Criminal 670 : AIR 2006 SC 2522, where a young woman had married out of her free will and a complaint under Sections 366, 368 IPC had been filed by her brother against her husband and his relatives, the police had submitted the final report, despite a statement of the petitioner's wife under Section 164 Cr.P.C. that she married at her own will. While quashing the entire criminal proceedings, a direction was issued by the Apex Court to the effect that administration/police authorities throughout the country would see to it that if any boy or girl who is major undergoes inter-caste or any religion marriage as a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence and anyone 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.

4. The reliance has also been placed on *Manish Singh v. State (Government of N.C.T.) and others*, 2006 (1) RCR (Criminal) 653 : 2006 (1) RCR (Civil) 414 : 2006 (1) Law Reports on Crimes 414 (Delhi). In the said case, considering the run away marriages, the Court quashed an FIR under Section 363 IPC where a girl of 17 years, on the verge of maturity had accompanied the boy of her own volition without any kind of enticement or

inducement or force from any one was alleged to have been kidnapped, observing as follows :

“18. ‘Run Away Marriages’ are manifestation of a generational change due to variety of factor, including increased interaction between the sexes, with young boys and girls attaining maturity rapidly. It is a complex problem with interplay of social, economic, religious, caste, educational factors, including sex education and vulnerability and backwardness of the weaker sex having its impact. The Child Marriage Restraint Act, 1929 as well as relevant provisions of the Hindu Marriage Act are social legislations aimed at protection and development of the vulnerable sex and have to be interpreted and worked accordingly. The consequences of considering such marriages as void or voidable need to be evaluated since the State as well as the social reformists who have not been successful to change the mindset of the people tuned to early marriages. By an estimate, prevalence of child marriages in the major States of West Bengal, Rajasthan, Bihar and Madhya Pradesh varies from 56 to 59%. Moreover, it is also to be noted that any adverse fall out of any law that makes such underage marriages as void or voidable would be borne by none other than the women and their progeny.

It is for the Parliament to consider whether the present provisions of the Hindu Marriage Act and the Child Marriage Restraint Act have proved insufficient or failed to discourage child marriages and to take such remedial steps, as are required in their wisdom.

19. What we as Judges are ordained to do, is to interpret the law as it stands, and that is precisely what we have done. We have added the above clarification since erroneous or misreporting of judicial pronouncements on vital issues affecting a large sections of the population may erode public confidence in judiciary, essential for the very preservation of rule of law.”

5. As the runaway marriages of young girls and boys are increasing, a reference to the concept of marriages in India has to be made. The institution of marriage, if studied and traced in context to Rigvedic period and Manu Samriti, is a sacramental, permanent, indissoluble, eternal and holy union and not a contractual union. But the said elements, to some extent stand diluted with the recognition of divorce and statutory recognition to remarriages. At present, the Hindu marriage has thus not remained a sacramental marriage and it has also not become solely a contract though it has semblance of both. Marriage has a semblance of a contract as consent is of some importance under the Act. It has a semblance of a sacrament as in most marriages a sacramental ceremony is still necessary. The Apex Court in *Seema v. Ashwani Kumar*, 2006 (1) RCR (Criminal) 963 : 2006 (1) RCR (Civil) 643 : 2006 (1) Apex Criminal 359 : (2006) 2 SCC 578 held that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States, where the marriage is solemnized. Various reasons for said requisition have been discussed in detail in the said judgment. The Apex Court has further directed the States and Central Government to take steps to notify the procedure for registration by respective States by amending the existing Rules, if any, or by framing new rules; the officer appointed under the said rules of the States shall be duly authorized to register the marriages. The consequence of non-registration of marriages or for filing false declaration shall also be provided for in the said Rules. It was observed in the said judgment that though registration of a marriage itself cannot be a proof of valid marriage *per se* and would not be the determinative factor relating the validity of the marriage yet it has a great evidentiary value in family matters. As a natural consequence, a fact of non-registration would be that the presumption available from registration of marriage would be denied to a person whose marriage is not registered. On April 15, 2005, in *Seema v. Ashwani Kumar*, (2005) 4 SCC 443, an interim direction had been issued by the Hon'ble Supreme Court to all the State Governments and Union Territories to issue orders/executive instructions authorizing officials to keep record of marriages so that the same may be placed as evidence in matrimonial proceedings until a suitable legislation, therefor, is framed.

6. Following the directions in *Lata Singh's case* (supra) it would have been very easy to dispose of all the petitions with a general direction to the concerned Senior Superintendents of Police/Superintendents of Police of different areas to protect the life and liberty of the petitioners, but a few instances have come to the knowledge of this Court which are being discussed hereinafter calling for carving out some exceptions and requiring minute consideration for laying down certain legal principles which could strike a balance between the right of personal liberty of the couples of ‘run away marriages’ and the requirement of the Society and procedures so that the process of the Court is not misused.

INSTANCES OF MISUSER

7. As the general directions issued by the Courts directing the police authorities to protect the life and liberty of couples of ‘run away marriages’ are some times misused, it would be relevant to refer to few instances which are as follows :

(i) In Criminal Writ Petition No. 941 of 2007, Resham Singh and Amarjit Kaur, claiming themselves to be majors having married against the wishes of the parents of Amarjit Kaur, had filed a petition for the protection of their life and liberty through CrI. Misc. No. 24954-M of 2007, which was disposed of on April 24, 2007, with a direction to S.S.P. to look into the matter and take steps to protect the life and liberty of the couple after determining the authenticity of the averments. Amarjit Kaur subsequently realized that she had been enticed and allured by Resham Singh and she was made to approach the High Court but as a matter of fact, Resham Singh was a already married person having three children. She was made to sign certain blank papers which were used to file the petition in the High Court and to procure an order of protection. After she returned to her parents, Resham Singh filed a *habeas corpus* petition bearing CrI.W.P.No. 941/2007 against the family members of Amarjit Kaur with a direction that Amarjit Kaur be produced in the Court and that her parents should not interfere in his peaceful married life.

Sequel to the notice issued to the family members of Amarjit Kaur, she had put in appearance in the Court on November 15, 2007 and stated that the petitioner used to be a visitor to the tenant of the house of her father. He had enticed and allured her with false promises and she was made to sign certain blank papers which were used to file a petition in the High Court and procure an order of protection. She stated that as a matter of fact Resham Singh was already married having three children. As her stay with her parents is not against her wishes, there was no alternative for this Court except to dismiss the said habeas corpus petition.

(ii) In case bearing *Cri. Misc. No. 46347-M of 2007, Sunita and another v. State of Punjab*, a direction has been sought against the official respondents for providing security to the petitioners besides a direction that petitioners should not be harassed in any criminal complaint, if lodged by respondents No. 4 to 6 or any relative of the petitioners alleging that the petitioners are majors having married on their own against the wishes of their parents. But a surprising feature was brought to the notice of the Court in the reply filed by respondents No. 5 to 8 that petitioner No. 1 has even stated her name wrongly as Sunita instead of her original name Karmo. Karmo, as a matter of fact is married to Jasbir on July 6, 1997. Out of her wedlock, two children were born. A copy of the ration card has been placed on the record to show that petitioner No. 1 who claims herself to be married to petitioner No. 2, is actually wife of Jasbir and mother of two children, namely, Shabnam and Rohit.

(iii) In *Cri. Misc. No. 49310-M of 2007, Rajwinder Kaur etc. v. State of Punjab*, Rajwinder Kaur and Jagbir Singh petitioners have filed a petition for direction to the police as well as to the private respondents No. 2 and 3 not to interfere in their peaceful married life or to intrude into their privacy. They have sought protection to their life and liberty at the hands of respondents No. 4 and 5 in the light of the judgment of *Lata Singh's case* (supra).

On notice having been issued to the State, it has been informed that an FIR No. 276 dated October 14, 2007, under Sections 363, 366-A IPC stands registered against petitioner No. 2. Petitioner No. 1 has also made a statement to the police that she was enticed by Jagbir Singh to marry him. She had stolen a sum of Rs. 25,000/- from her home alongwith some gold and gone with petitioner No. 2. He had, against her wishes committed rape upon her. Offence under Section 376 IPC has also been added in the FIR. Proceedings for declaring him proclaimed offender have been finalized. The facts of *Rajwinder Kaur's case* clearly indicate that the petition for protection of life and liberty was filed in this Court merely to create a record regarding marriage which had not actually taken place, with an oblique motive to get a stamp of validation of marriage or to create a defence in the criminal case which had been filed against petitioner No. 2.

(iv) In *Cri. Misc. No. 51130-M of 2007*, a petition has been filed by Kulwinder Kaur and Rajinder Singh for protection of their life and liberty, claiming to have married having attained the age of maturity. An affidavit of Kulwinder Kaur has been placed on record that her date of birth is June 28, 1989. In this case, on the basis of police record, it has been informed that petitioner No. 1, as per her matriculation certificate is about 15 years of age and her date of birth is June 6, 1993 and a criminal case under Section 363 IPC stands registered against petitioner No. 2 having kidnapped petitioner No. 1. An FIR No. 177 of 2007 under Sections 363-A, 366 and 120-B IPC Police Station Sultanpur Lodhi is stated to have been registered against petitioner No. 2. Concealing the factum of registration of case, this petition for protection has been filed.

In reply, a copy of the matriculation certificate of petitioner No. 1 has been attached showing her date of birth as June 6, 1993. The date of marriage has been given as November 5, 2007, but no document has been placed on record for arriving at a conclusion that marriage has actually taken place. Only a photograph with garlands has been attached with the petition. In this case, the petition seems to have been filed with an objective to create a defence in the criminal case registered against petitioner no. 2.

(v) In case of *Hira Lal and Ramandeep Kaur v. State of Punjab and others, Cri. Misc. No. 28412-M of 2007*, decided on May 4, 2007, the couple had approached this Court for a direction to the SSP, Jalandhar and to the concerned SHO to safeguard the lives of the couple by providing police protection and not to let the father of the girl or anybody else to interfere in the life and liberty of the said petitioners or to harass them in any manner, claiming that they had married against the wishes of the family members of the girl. Vide order dated May 4, 2007, the SSP and the concerned SHO were given directions to help the said couple and to protect their life and liberty. When the directions were issued on May 4, 2007, the father of the girl Ramandeep Kaur had already committed suicide on May 3, 2007 and an FIR stood registered against Hira Lal and his other family members for having abetted the commission of suicide as Hira Lal used to give threat to the father of Ramandeep Kaur to kill him and alongwith his family members used to taunt and harass the deceased. The factum of suicide was not brought to the notice of this Court intentionally while obtaining the orders of protection of the life and liberty.

(vi) In *Cri Misc. No. 50162-M of 2007, Seena Bibi and Mohd. Roshan* have filed a petition for protection of their life and liberty claiming themselves to be married. But in reply filed by the private respondents, it was disclosed that the marriage, if any, between the petitioners was void as petitioner No. 1 Seena Bibi was the legally wedded wife of Sepahia son of Mir Hussain, as such, she cannot be granted the protection. Petitioner No. 1 is alleged to have already married the said Sepahia on January 19, 2005 at Gurdaspur as per Mohammedan rites and ceremonies.

8. The above noted references have been mentioned hereinabove to quote the examples regarding the misuser of the process of the Court by the young rebellion couples who under the garb of having attained majority have approached the High Court, not with a *bona fide* desire for getting protection but solely to create an evidence regarding the approval of their marriage by the High Court in the garb of the directions of this Court,

- (i) the case of *Amarjit Kaur* shows that a married person having three children after enticing and alluring a girl approached this Court to create a defence for the criminal act having committed by him.
- (ii) The case of *Sunita* is a glaring example where a married lady being mother of two children has made an attempt to seek a stamp of this Court approving her marriage by moving an application for protection.
- (iii) Case of *Rajwinder Kaur* is an example where a young girl had been enticed by Jagbir Singh into marriage. He made her run away from her home stealing Rs. 25,000/-, the boy concealing the fact that a criminal case under Section 376 IPC stands registered, approached this Court. The case of *Rajwinder Kaur and Jagbir Singh*, above mentioned shows that petition for protection of life and liberty has been moved in this Court with an oblique motive of Jagbir Singh to create a defence in criminal case registered against, him under Section 376 Cr.P.C. for enticing Rajwinder Kaur and committing rape upon her.
- (iv) In the case of *Kulwinder Kaur and Rajinder Singh*, concealing the factum of girl being minor and to create a defence in criminal case registered against the boy, petition for protection of life and liberty has been filed.
- (v) The case of *Mira Lal and Ramandeep Kaur*, is not a case of honour killing but a case where the father of the girl has committed suicide and the young couple has approached the Court for protection of their life and liberty with an oblique motive to create an evidence for defence that they are married besides having protection under the orders of the High Court.
- (vi) In the case of *Seena Bibi* despite she being already married, she has moved an application for protection of life and liberty on the ground that she stands married to another person, namely, Mohd. Roshan, co-petitioner with her.

9. The concept of freedom and liberty seems to have been misunderstood by the young couples of "rebellion marriages". The evolution of the State from "police State" to a "welfare State" is the ultimate measure and accepted standard of democratic society which is an avowed Constitution mandate. No doubt, the main function of the democratic government is to safeguard the liberty of the individual but its exercise is subject to social control. If the liberty is absolute and unlimited and not guided by morality, it becomes anti-social. The rule of law in a democratic society aims not only to protect the fundamental rights of the citizens but also to establish an egalitarian social order. Liberty has to be controlled in the interest of society but at the same time, the social interest must never be overbearing to justify the deprivation of individual liberty. Liberty cannot stand alone but has to be enjoyed alongwith other virtues like morality, law, justice, common good, for the orderly progress and social stability. Man being a rational individual has to live in harmony with the similar equal rights of others. The concept of personal liberty in context to Article 21 of the Constitution of India has been explained by Hon'ble Justice K. Ramaswamy in *Kartar Singh v. State of Punjab*, 1994 (2) RCR (Criminal) 168 : 1994 (3) SCC 569, as follows :

"373. The foundation of Indian political and social democracy, as envisioned in the preamble of the Constitution, rests on justice, equality, liberty, and fraternity in secular and socialist republic in which every individual has equal opportunity to strive towards excellence and of his dignity of person in an integrated egalitarian Bharat. Right to justice and equality and stated liberties which include freedom of expression, belief and movement are the means for excellence. The right to life with human dignity of person is a fundamental right of every citizen for pursuit of happiness and excellence. Personal freedom is a basic condition for full development of human personality. Article 21 of the Constitution protects right to life which is the most precious right in a civilized society. The trinity i.e. liberty, equality and fraternity always blossoms and enlivens the flower of human dignity. One of the gifts of democracy to mankind is the right to personal liberty. Life and personal freedom are the prized jewels under Article 19 conjointly assured by Articles 20(3), 21 and 22 of the Constitution and Article 19 ensures freedom of movement. Liberty aims at freedom not only from arbitrary restraint but also to secure such conditions which are essential for the full development of human personality. Liberty is the essential concomitant for other rights without which a man cannot be at his best. The essence of all civil liberties is to keep alive the freedom of the individual subject to the limitations of social control envisaged in diverse articles in the chapter of Fundamental Rights Part III in harmony with social good envisaged in the Directive Principles in Part IV of the Constitution. Freedom cannot last long unless it is coupled with order. Freedom can never exist without order. Freedom and order must coexist. It is essential that freedom should be exercised under authority and order should be enforced by authority which is vested solely in the executive. Fundamental rights are the means and the directive principles are essential ends in a welfare State. The evolution of the State from police State to a welfare State is the ultimate measure and accepted standard of democratic which is an avowed constitutional mandate. Though one of the main functions of the democratic government is to safeguard liberty of the individual, unless its exercise is subject to social control; it becomes anti-social or undermines the security of the State. The Indian democracy wedded to rule of law aims not only to protect the fundamental rights of its citizens but also to establish an egalitarian social order. The individual has to grow within the social confines preventing his unsocial or unbridled growth which could be done by reconciling individual liberty with social control. Liberty must be controlled in the

interest of the society but the social interest must never be overbearing to justify total deprivation of individual liberty. Liberty cannot stand alone but must be paired with a companion virtue; liberty and morality; liberty and law; liberty and justice; liberty and common good; liberty and responsibility, which are concomitants for orderly progress and social stability. Man being a rational individual has to live in harmony with equal rights of others and more differently for the attainment of antithetic desires. This intertwined network is difficult to delineate within defined spheres of conduct within which freedom of action may be confined. Therefore, liberty would not always be an absolute licence but must arm itself within the confines of law. In other words there can be no liberty without social restraint. Liberty, therefore, as a social conception is a right to be assured to all members of a society. Unless restraint is enforced on and accepted by all members of the society, the liberty of some must involve the oppression of others. If liberty be regarding a social order, the problem of establishing liberty must be a problem of organizing restraint which society controls over the individual. Therefore, liberty of each citizen is borne of and must be subordinated to the liberty of the greatest number, in other words common happiness as an end of the society, lest lawlessness and anarchy will tamper social weal and harmony and powerful courses or forces would be at work to undermine social welfare and order. Thus the essence of civil liberty is to keep alive the freedom of the individual subject to the limitation of social control which could be adjusted according to the needs of the dynamic social evolution.

374. The modern social evolution is the growing need to keep individual to be as free as possible, consistent with his correlative obligation to the society. According to Dr. Ambedkar in his closing speech in the constituent Assembly, the principles of liberty, equality and fraternity are not to be treated as separate entities but in a trinity. They form the union or trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality. Equality cannot be divorced from liberty. Nor can equality and liberty be divorced from fraternity. Without equality, liberty would produce supremacy of law. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality would not become a natural course of things. Courts, as sentinel on the *qui vive*, therefore, must strike a balance between the changing needs of the society for peaceful transformation with orders and protection of the rights of the citizen.

375. As seen, one of the functions of the State is to maintain peace and order in the society. As its part, State is not only the prosecutor of the offender but also the investigator of crime. To facilitate such investigation police has been given wide powers to arrest the suspect without warrant, interrogate him in custody, search and seize incriminating material, to collect the evidence and to prosecute the offender. Deprivation of dignity of person, self-respect and inviolable right to life, would only be within the prescribed limits set down by laws; assiduously supervised by courts; and executive excesses strictly be limited. Excessive authority without liberty is intolerable. Equally excessive liberty without authority and without responsibility soon becomes intolerable. Lest the freedoms and fundamental rights become sacrificial objects at the altar of expediency. Unrestricted liberty makes life too easy for criminals and too difficult for law abiding citizens. In a free society too many crooks blatantly break the law, blight young lives, traffic in drugs and freely indulge in smuggling and claim fundamental rights to exploit weak links of law, indulge in violence and commercial camouflage. Our values are drastically eroded because many a man with no more moral backbone than a chocolate éclair claim the freedom and free action which results inevitably in increasing the members of violent criminals."

10. A perusal of the above paragraphs makes it clear that freedom and the order must co-exist. Essence of civil liberty is to keep alive the freedom of the individual subject to the limitation of social control which could be adjusted according to the needs of the dynamic social evolution. The Courts must strike a balance between the changing needs of the society for physical transformation with orders and protection of the rights of the citizens. *Liberty cannot stand alone but must be paired with a companion virtue; liberty and morality; liberty and law; liberty and justice; liberty and common good; liberty and responsibility, which are concomitants for orderly progress and social stability. Man being a rational individual has to live in harmony with equal rights of others and more differently for the attainment of antithetic desires.* Unrestricted liberty makes life too easy for law-breakers and too difficult for law abiding citizens.

11. Chief Justice Warren Burger addressing American Bar Association in 1970, had observed that in a democratic society, the Court systems play an essential role in seeing that neither licence nor tyranny becomes dominant.

12. The concept as enshrined in Article 21 of the Constitution of India was examined in depth by the Apex Court in AIR 1950 SC 27, *A.K. Gopalan v. State of Madras*. Patanjali Sastri, J. observed as follows :

"Per Patanjali Sastri, J. - It is a misconception to think that constitutional safeguards are directed against individuals. They are as a rule directed against the State and its organs. Protection against violation of the rights by individuals must be sought in the ordinary law. Article 21 is not designed to afford protection against infringements by the executive or individuals."

13. The scope of right of life and liberty as enshrined in Article 21 of the Constitution of India reads as under :

"21. *Protection of life and personal liberty.*

No person shall be deprived of his life or personal liberty except according to procedure established by law."







