

(2019) 03 MP CK 0041
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 1998 Of 2019

Akash Vijaywargiya & Another

APPELLANT

Vs

State Of Madhya Pradesh & Others

RESPONDENT

Date of Decision : 11-03-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 144, 151
Indian Penal Code, 1860 — Section 141, 143, 503, 506

Citation : (2019) 03 MP CK 0041

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Advocate : Nilesh Dave, Pawan Sharma

Final Decision : Disposed Off

Judgement

This writ petition has been filed by the petitioners seeking police protection on the ground that their relatives and member of the society are harassing them on account of their entering into the wedlock.

It is submitted by the petitioners that they are major and they have entered into the marital relation voluntarily. In order to prove their age they have filed photocopy of ID and in order to prove marriage they filed photographs and marriage certificate.

The petitioners are apprehending threat to their life, therefore, they immediately approached this court seeking police protection.

If the petitioners are major and entered into the marriage voluntarily, then they should not be harassed by any one, just because they have objection with their marriage. In order to avoid any harassment, the petitioners are certainly entitled for police protection.

That, in case of Lata Singh Vs. State of U.P. Another reported in AIR 2006 SC 2522, the Apex Court has observed as under:

"this is free and democratic country and once a person becomes a major he or 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 relation with the son or daughter, but they can give threats or commit or instigate acts of violence and cannot harass the person undergoes such inter caste or inter religious relationship marriage. We therefore direct that the administrative/ police authorities throughout the country will see to it that if any boy or girl who is major, the couple are harassed by any one nor subjected to threats or acts of violence and may one who gives such threats or harass or commit acts of violence either himself or at his instigation is taken to task by instituting criminal proceedings, by the police against such person and further stern action is taken against such persons as provided by law"

The Apex Court in the matter of "Khap Panchayat" has taken up the issue of Honour Killing" very seriously and issued certain preventive, remedial punitive measures to all the State Governments. The relevant direction passed in case No. 231/2010 (Shakti Vahini vs. State of M.P.) decided on 27.03.2018 are as under:-

"To meet the challenges of the agonising effect of honour crime, we think that there has to be preventive, remedial and punitive measures and, accordingly, we state the broad contours and the modalities with liberty to the executive and the police administration of the concerned States to add further measures to evolve a robust mechanism for the stated purposes.

I. Preventive Steps:-

(a) The State Governments should forthwith identify Districts, Sub-Divisions and/ or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.

(b) The Secretary, Home Department of the concerned States shall issue directives/advisories to the Superintendent of Police of the concerned Districts for ensuring that the Officer Incharge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or inter-religious marriage within their jurisdiction comes to their notice.

(c) If information about any proposed gathering of a Khap Panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.

(d) On receiving such information, the Deputy Superintendent of Police (or such senior police officer as identified by the State Governments with respect to the area/district) shall immediately interact with the members of the Khap Panchayat and impress upon them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting.

Additionally, he should issue appropriate directions to the Officer Incharge of the jurisdictional Police Station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of the proposed gathering.

(e) Despite taking such measures, if the meeting is conducted, the Deputy Superintendent of Police shall personally remain present during the meeting and impress upon the assembly that no decision can be taken to cause any harm to the couple or the family members of the couple, failing which each one participating in the meeting besides the organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of the discussion and participation of the members of the assembly is done on the basis of which the law enforcing machinery can resort to suitable action.

(f) If the Deputy Superintendent of Police, after interaction with the members of the Khap Panchayat, has reason to believe that the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/ Competent Authority of the concerned area for issuing orders to take preventive steps under the Cr.P.C., including by invoking prohibitory orders under Section 144 Cr.P.C. and also by causing arrest of the participants in the assembly under Section 151 Cr.P.C. (g) The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stake holders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.

(h) There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitization of the law enforcement agencies to mandate social initiatives and awareness to curb such violence.

II. Remedial Measures:-

(a) Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.

(b) Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.

(c) Additionally, immediate steps should be taken to provide security to the

couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate (i) young bachelor-bachelorette couples whose relationship is being opposed by their families /local community/Khaps and (ii) young married couples (of an inter-caste or inter-religious or any other marriage being opposed by their families/ local community/Khaps). Such safe houses may be placed under the supervision of the jurisdictional District Magistrate and Superintendent of Police.

(d) The District Magistrate/Superintendent of Police must deal with the complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether the bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided logistical support for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house initially for a period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending on their threat assessment on case to case basis.

(e) The initial inquiry regarding the complaint received from the couple (bachelor-bachelorette or a young married couple) or upon receiving information from an independent source that the relationship/marriage of such couple is opposed by their family members/local community/Khaps shall be entrusted by the District Magistrate/ Superintendent of Police to an officer of the rank of Additional Superintendent of Police. He shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception. On being satisfied as to the authenticity of such threats, he shall immediately submit a report to the Superintendent of Police in not later than one week.

(f) The District Superintendent of Police, upon receipt of such report, shall direct the Deputy Superintendent of Police incharge of the concerned sub-division to cause to register an F.I.R. against the persons threatening the couple(s) and, if necessary, invoke Section 151 of Cr.P.C. Additionally, the Deputy Superintendent of Police shall personally supervise the progress of investigation and ensure that the same is completed and taken to its logical end with promptitude. In the course of investigation, the concerned persons shall be booked without any exception including the members who have participated in the assembly. If the involvement of the members of Khap Panchayat comes to the fore, they shall also be charged for the offence of conspiracy or abetment, as the case may be.

III. Punitive Measures:-

(a) Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably

not exceeding six months, by the authority of the first instance.

(b) In terms of the ruling of this Court in Arumugam Servai (supra), the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

(c) The State Governments shall create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.

(d) These Special Cells shall create a 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.

(e) The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated Court/Fast Track Court earmarked for that purpose. The trial must proceed on day to day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof."

In view of the above, the petitioners are directed to approach the Superintendent of Police, Rajgarh alongwith their documents relating to age proof and marriage and record their statement and also inform the name of the person who is threatening them. If the petitioners cannot approach to the superintendent of Police due to some reason and in case of emergency then they are permitted to approach the nearest police station to record their statements. If the superintendent of police / SHO finds that there is threat to the life of the petitioners then he shall immediately take action in accordance with the direction given by the Apex Court in the case of Shakti Vahini (Supra).

With the aforesaid, present writ petition stands disposed of.

It is directed that a copy of this order be supplied to the office of Advocate General and he is directed to communicate the order to Superintendent of Police, Rajgarh for prompt compliance of the order.

C.C. as per rules.