

(2018) 12 J&K CK 0040

In the Jammu And Kashmir High Court

Case No : Other Writ Petition (OWP) No. 2546 Of 2018, IA No. 01 Of 2018

Mumtaz Bano & Anr @APPELLANT@Hash State Of Jammu & Kashmir And Others

Date of Decision : 13-12-2018

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2018) 12 J&K CK 0040

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : K. S. Chib, Raman Sharma

Final Decision : Disposed Off

Judgement

1. The case of the petitioners is that they are major and being capable of understanding their well being, contracted the marriage under Muslim Personal Law on 02.08.2018. Thereafter, they executed a marriage agreement on 03.12.2018, which is duly attested by Public Notary. Photo-copies of Nikahnama and Marriage Agreement are annexed with the instant petition as Annexures-C & D respectively.

2. It is stated in the petition that the petitioners were major at the time of solemnization of their marriage. This marriage was against the wishes of respondent Nos.4 & 5, due to which petitioners had left their village and are residing at Jammu. It is further stated that respondent Nos.4 & 5 are against the lives of petitioners and they have made an attempt to assault the petitioners but the petitioners have escaped, and lodged a complaint before the Judicial Magistrate and petitioner No.1 has got her statement recorded on 04.12.2018. Photo-copy of said statement is annexed as Annexure-E. Respondent Nos.4 & 5 in connivance with respondent No.3 started extending threats to the lives of both the petitioners, more particularly petitioner No.2 and his family members stating that if he will not break matrimonial ties with petitioner No.1, he will be eliminated and also he will be got arrested by respondent Nos.4 & 5 with the connivance of respondent No.3.

3. They have proceeded to state that their movement has been restricted due to the continuous harassment meted out to them at the hands of the respondent Nos.4 & 5. They have also stated that the threat perception looms large on their heads, as the respondent Nos.4 & 5 have threatened both the petitioners, more particularly petitioner No.2 and his family members stating that if he will not break matrimonial ties with petitioner No.1, he will be eliminated.

4. The petitioners, in person, appeared before this court at the time of hearing of the petition along with their counsel. They have categorically stated in the open Court that they have solemnized marriage on 02.08.2018 and have also executed Marriage Agreement on 03.12.2018 with their own free will and consent, and without any force from anybody.

5. During the course of argument, learned counsel for the petitioners, has stated that the petitioners would be satisfied, if this petition is disposed of at this stage by directing official respondents to provide adequate protection to the petitioners from the harassment at the hands of respondent Nos.4 & 5.

6. I have considered the submissions of learned counsel for the petitioners.

7. From the perusal of petition, it is evident that this petition has been supported by an affidavit. There are photo-copies of Aadhar Card issued by Govt. of India wherein date of birth of petitioner No.1 is shown as 02.02.2000, whereas date of birth of petitioner No.2 is reflected as 05.05.1991. Marriage has been solemnized on 02.08.2018 as is evident from Annexures-C. So petitioners were major at the time of solemnization of marriage.

8. In similar circumstances where parties had entered into wedlock of their own free will and volition, the Hon'ble Supreme Court in *Lata Singh v. State of UP and anr*, AIR 2006 SC 2522 has held as under:

"14. This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.....
....

17. 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, 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."

9. In *Shafin Jahan Vs. Asokan K. M. & Ors.* reported in AIR 2018 SC 1933, it has also been held that:-

"20. Article 16 of the Universal Declaration of Human Rights underscores the fundamental importance of marriage as an incident of human liberty:

"Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

21. The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners.

22. In *Justice K S Puttaswamy v Union of India*, 2017 (10) SCC 1, this Court in a

decision of nine judges held that the ability to make decisions on matters close to one's life is an inviolable aspect of the human personality:

"The autonomy of the individual is the ability to make decisions on vital matters of concern to life... The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination... The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual."

A Constitution Bench of this Court, in *Common Cause (A Regd. Society) v Union of India*, Writ Petition (Civil) No.215 of 2005, held:

"Our autonomy as persons is founded on the ability to decide: on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe or not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives."

The strength of the Constitution, therefore, lies in the guarantee which it affords that each individual will have a protected entitlement in determining a choice of partner to share intimacies within or outside marriage."

10. Mr. Raman Sharma, learned Dy. AG, is appearing on behalf of the official respondents and states that he has no objection, if the petition is disposed of at this stage.

11. In view of the above, this petition is, accordingly, disposed of at this stage, with a direction that the official respondent Nos.1 to 3 shall ensure the protection of lives and liberty of the petitioners and shall take appropriate steps strictly in accordance with the ratio of judgment (*supra*).