

(2019) 03 J&K CK 0158

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 430 Of 2019, IA No. 01 Of 01 Of 2019

Salma Banno And Another

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 21

Citation : (2019) 03 J&K CK 0158

Hon'ble Judges : Sanjay Kumar Gupta, J

Bench : Single Bench

Advocate : Gagan Kohli, Aseem Sawhney

Final Decision : Disposed Off

Judgement

1. The case of the petitioners is that they are major and were having a love affair. They disclosed the fact of their love affair to their respective parents and requested them for the solemnization of marriage between the petitioners to which the parents of petitioner No.2 agreed but the parents of petitioner No.1 especially respondent Nos.5 & 6 got annoyed. Even parents and relations of petitioner No.1 told petitioner No.2 that if in future petitioner No.2 tried to see their daughter, they will eliminate him.

2. Constrained by the above mentioned situation both the petitioners being major and capable of understanding their well-being, on 15.03.2019 executed marriage agreement duly attested by Notary, District Jammu. Thereafter, they performed Nikah as per Muslim Law at Jammu on 15.03.2019, out of free will, without any pressure, coercion and undue influence from any quarter. After the solemnization of the marriage between the petitioners, petitioner No.1 joined the company of petitioner No.2 as his legally wedded wife. As the said marriage was against the wishes of respondent Nos.5 & 6 and their relatives, they had made the lives of the petitioners miserable. Respondent Nos.5 & 6 and their relatives have openly declared that they will kill both the petitioners in order to satisfy their ego.

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 No.5 & 6 and their relatives. They have also stated that the threat perception looms large on their heads, as the respondent Nos.5 & 6 and their relatives have openly declared that they will do away with their lives.

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 with each other on 15.03.2019 with their own free will and consent, and without any force from anybody. They have also executed marriage agreement on 15.03.2019.

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 from the harassment at the hands of respondent No.5 & 6 and their relatives.

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

7. From bare perusal of the petition, it is evident that petition has been supported by an affidavit. The petitioners have placed on record photo-copy of Aadhar Card issued by the Govt. of India, in respect of petitioners, wherein the date of birth of petitioner No.1 & 2 is shown as 11.02.1999 & 03.01.1985 respectively. Marriage has been solemnized on 15.03.2019. 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. Aseem Sawhney, learned AAG, 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 4 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*).