
(2009) 11 UK CK 0010

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 626 of 2008 (M/B)

Smt. Jyoti Negi and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Citation : (2010) 1 NCC 323

Hon'ble Judges : Dharam Veer, J;B.C.Kandpal, J

Bench : Division Bench

Judgement

Hon"ble B.C. Kandpal, J.—By way of this writ petition, the petitioners have prayed for issuing writ in the nature of mandamus commanding and directing the respondents No. 1 & 2 to provide the security in order to protect the life and liberty to the petitioners so that they may not be harassed and tortured by the respondent nos.3 & 4 and by their henchmen.

2. Heard Sri Bhuvnesh Joshi, Advocate for the petitioners and Sri Nandan Arya, learned AGA for the State/respondent Nos. 1 & 2 as well as Sri R.C. Upadhyaya, Advocate for the respondent Nos. 3 & 4 and perused the record.

3. The case of the petitioners is that they are married and their marriage is registered with the Registrar, Hindu Marriage, Almora. It is further submitted that the marriage was also solemnized in Arya Samaj Temple, Almora. As it has further been submitted by the respondent nos. 3 & 4 and their henchmen unnecessarily making attempt to put petitioner Nos. 1 & 2 behind the bar and they are taking the assistance of Respondent No. 1 in this regard. Hence, they be provided security in order to protect their life and liberty.

4. The counter affidavit in this case has been filed on behalf of the respondent Nos. 1 & 2 as well as on behalf of the respondent Nos.3 & 4. Respondent Nos. 3 & 4 have denied the allegations levelled by the petitioners in the petition by taking the plea that when the whereabouts of Jyoti Negi had not been known to the respondent no. 3, he lodged the First Information Report at Police Station

Dwarahat. It has been further averred in the counter affidavit filed by respondent no. 3 that the petitioner no. 2 in order to save himself from the clutches of law, has filed the writ petition. It has been further stated by the respondent no. 3 that the photographs showing the marriage ceremony of the petitioner Nos. 1 & 2 are nothing but a trick photography and these photographs have no evidential value.

5. As earlier stated that the respondent no.2 has also filed the counter affidavit and in this counter affidavit, it has been stated that the petitioner no.2 in fact has abducted the petitioner no.1 and he, only to save himself from the clutches of law, has filed this writ petition. As far as the photographs annexed as Annexure No.4 to the writ petition are concerned, the respondent nos. 1 & 2 denied the photographs.

6. As far as the certificate issued by Arya Samaj Temple, Almora with regard to the petitioner Nos. 1 & 2 is concerned, the respondent No.2 and respondent no. 3 in their counter affidavits have although not denied the existence of the certificate but have stated that this certificate has no evidential value. However, Tej Singh Adhikar, Naib Tehsildar, Dwarahat, District Almora, who has filed the counter affidavit on behalf of the respondent Nos. 1 & 2, has stated that the Investigating Officer during the course of enquiry recorded the statement of Purohit of Arya Samaj Temple, Almora namely Dinesh Tiwari, who in his statement has deposed that the petitioner nos. 1 & 2 performed the marriage on 25.7.2008 at 1:30 noon. The copy of the statement of Purohit Dinesh Tewari has been annexed as Annexure CA4 to the counter affidavit filed by Naib Tehsildar on behalf of the respondent Nos. 1 & 2.

7. Learned counsel for the petitioners has submitted that in the criminal case, which was registered on the FIR of complainant/respondent no.3 Bhim Singh Negi, has resulted to the final report. It is, therefore, now undisputed that the petitioner Nos. 1 & 2 have solemnized the marriage in the Arya Samaj Temple, Almora on 25.7.2008 at 1:30 noon. As the performance of marriage has not been denied by the respondent Nos. 1 & 2 as well as by the respondent Nos. 3 & 4. The respondent no. 3 has pleaded that the certificate issued by Arya Samaj Temple, Almora has no evidential value but this particular fact could not be controverted by the respondent no. 3 that the petitioner Nos. 1 & 2 have performed the marriage.

8. However, without entering into this aspect whether the marriage of petitioner Nos. 1 & 2 has taken the legal shape or not, we are of the view while deciding this writ petition that there is no necessity for issuing any writ in the nature of mandamus directing the respondent Nos. 1 & 2 to provide any security to the petitioners to protect the life and liberty of petitioner Nos. 1 & 2. However, we feel that in case the petitioners have any apprehension of their life and liberty, they may move a representation before the District Authorities like District Magistrate and Senior Superintendent of Police, Almora for providing the security to them and the authorities concerned, after assessing the entire situation, will do needful in this regard.

9. With the aforesaid observation, the writ petition is finally disposed of.