

Deepika and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Nov-11-2013

Judge : Pradeep Kumar Singh Baghel

Appeal No. : Writ C. No. 33919 of 2013

Appellant : Deepika and Another

Respondent : State of U.P. and Others

Judgement :

Pradeep Kumar Singh Baghel, J.-

1. Petitioners have preferred this writ petition to seek issuance of a writ of mandamus or direction upon the respondents not to interfere in the peaceful marital life of the petitioners.

2. A brief reference to the factual aspects would suffice.

3. The petitioner no. 1 is stated to be wife of the petitioner no. 2. Her date of birth is 17th September, 1986, whereas date of birth of the petitioner no. 2 is 28th February, 1985. Petitioner no. 1 earned her Bachelor of Medicine and Bachelor of Surgery (M.B.B.S.) degree in the year 2010. The petitioner no. 2 did his Bachelor of Technology in Computer Science and Engineering. He stood first in his examination. Both the petitioners are thus major. It is stated that they were well acquainted with each other and, therefore, in cool mind, without there being any

influence of any one, keeping in mind their life partner and in order to lead matrimonial life, they decided to marry. The parents of both the petitioners had objection about their marriage, presumably on the ground that they are from different caste, therefore, they decided and accordingly got their marriage performed on 04th June, 2013 at Arya Samaj Mandir, Arya Nagar, Ghaziabad. They have brought on record the marriage certificate issued by the Arya Samaj Mandir, Arya Nagar, Ghaziabad as Annexure-2 to the writ petition. It is stated that the petitioners also moved an application before the Registrar, Hindu Marriage-V, Ghaziabad for registration of their marriage. Registrar, Hindu Marriage-V, Ghaziabad has also issued a marriage registration certificate dated 04th June, 2013, which has been brought on record as Annexure-4 to the writ petition.

4. It is alleged by the petitioners that respondent no. 4, father of the petitioner no. 1, influenced the Senior Superintendent of Police, Hapur, the respondent no. 2, for harassment/torture of the petitioners, on account of which the police personnel of Police Station Hapur came to the petitioners' house and harassed them as well as family members of the petitioner no. 2. Thereupon, both the petitioners approached the respondent no. 2 and made a complaint against the local police. However, in spite of the said complaint made to the respondent no. 2, local police again came at the house of the petitioners and threatened them. Therefore, having no other remedy, the petitioners have approached this Court for a direction upon the respondents not to interfere in the peaceful marital life of the petitioners. The principal ground of the writ petition is violation of their fundamental right under Article 21 of the Constitution.

5. In this Court, large numbers of the writ petitions under Article 226 of the Constitution of India are filed on somewhat similar facts and for similar reliefs. Keeping in view huge number of cases every day, Honble the Chief Justice of this Court has assigned a separate jurisdiction to a Single Judge Bench under the caption of *œcouple matters?*. The common grievance of the petitioners in these writ petitions is that they are major and they wish to live with each other, but they are being subjected to harassment by the local police at the behest of their unwilling parents. In these petitions, some of the petitioners claim that they have married in accordance with their religion/faith. There are cases of inter-religion

marriages also. In some cases, petitioners also file marriage certificates duly issued by the Registrar (Marriage) to establish that they are legally wedded couple.

6. This Court is not concerned whether marriage in such cases is valid or not. These writ petitions cannot be treated as a short cut for a certificate of this Court regarding legality of marriage of the petitioners. But an important issue raised in these petitions is regarding the fundamental rights of the petitioners guaranteed under Article 21 of the Constitution. Can this Court be a silent spectator, when its extraordinary jurisdiction under Article 226 of the Constitution is invoked seeking its protection for personal liberty and to live with human dignity by a young couple, whose only fault is that they have crossed the bridge of caste and religion?

7. This Court takes divergent views and different nature of reliefs are granted by the different Benches. I find that there is no authoritative pronouncement by this court on this issue but the Supreme Court has considered this issue and has laid down the law in no uncertain terms.

8. In the case of Gian Devi v. The Superintendent, Nari Niketan, Delhi and others, (1976) 3 SCC 234, a three-Judge Bench of the Supreme Court has held that if a girl is major then no fetter can be placed upon her choice of the person with whom she is to stay nor any restriction can be imposed regarding the place where she should stay. The Supreme Court speaking through Justice H. R. Khanna (as His Lordship then was) further observed that relatives can also have no right to interfere in such matter. It is enough to extract relevant part of the judgment which reads as under:

œ7. Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is sui juris no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter.?

9. In the case of *Lata Singh v. State of U.P. and another*, reported in (2006) 5 SCC 475, the Court has welcomed the intercaste marriages and has noted that the caste system is a curse on the nation and once a person becomes major, he or she can marry whosoever he or she likes, and if parents of such boy or girl do not approve of such inter-caste marriage, they can simply cut-off social relations with son or daughter, but they cannot give threats or commit or instigate acts of violence. In the said case, the Supreme Court has issued a general direction to the administration/ police authorities throughout the country to see that if any boy or girl, who is a major, undergoes inter-caste or inter-religion marriage, with a woman or man, who is a major, they should not be harassed by anyone nor subjected to threats or acts of violence. The relevant part of such judgment is extracted below:

œ17. 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 cutoff 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 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 person and further stern action is taken against such persons as provided by law.?

(emphasis supplied by me)

The judgment of *Lata Singh* (supra) was approved by a three-Judge Bench of the Supreme Court in the case of *S. Khushboo v. Kanniammal and another*, (2010) 5 SCC 600, and it was held that a major girl is free to marry anyone she likes or œlive with anyone she likes?. In such a situation, the Court further held that no offence was committed by any of the accused and the whole criminal case in question was held to be abuse of the process of the Court. The Court commenting

on the issue of morality in such cases aptly observed as under:

œ46. . . . Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and criminality are not coextensive.?

11. In the case of Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396, the Supreme Court has taken judicial notice of the honour killings in many parts of the country, particularly in Haryana, Western Uttar Pradesh and Rajasthan. The Court has strongly condemned honor killings in such situation and has held that such act will be treated within the category of rarest of rare cases deserving death punishment. Paragraphs-28 and 29 of Bhagwan Dass (supra) read as under:

œ28. .. Often young couples who fall in love have to seek shelter in the police lines or protection homes, to avoid the wrath of kangaroo courts. We have held in Lata Singh case that there is nothing œhonourable? in œhonour? killings, and they are nothing but barbaric and brutal murders by bigoted persons with feudal minds. In our opinion honour killings, for whatever reason, come within the category of the rarest of rare cases deserving death punishment. It is time to stamp out these barbaric, feudal practices which are a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilised behavior. All persons who are planning to perpetrate œhonour? killings should know that the gallows await them.

29. Let a copy of this judgment be sent to the Registrars General/ Registrars of all the High Courts who shall circulate the same to all the Judges of the Courts. The Registrars General/ Registrars of the High Courts will also circulate copies of the same to all the Sessions Judges/ Additional Sessions Judges in the States/Union Territories. Copies of the judgment shall also be sent to all the Chief Secretaries/ Home Secretaries/ Directors General of Police of all States/ Union Territories in the country. The Home Secretaries and Directors General of Police will circulate the same to all SSPs/SPs in the States/Union Territories for information.?

(emphasis supplied)

12. The Supreme Court in the case of D. Velusamy v. D. Patchaiammal, reported in (2010) 10 SCC 469, has considered the live-in relationship or a relationship in the nature of marriage and laid down some ingredients, which can be treated like a common law marriage. The relevant paragraph of the judgment reads as under:

œ31. In our opinion a œrelationship in the nature of marriage? is akin to a common law marriage. Common law marriages require that although not being formally married:

(a) The couple must hold themselves out to society as being akin to spouses.

(b) They must be of legal age to marry.

(c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

(d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.?

13. The above law was in respect of live-in relationship, therefore, in the present context the requirement of (d) would not be applicable.

14. Similar view has also been taken by the different Division Benches of this Court. In the case of Tanushree Upadhyay @ Tanushree Tripathi and another Vs. State Of U.P. and others, Civil Misc. Writ Petition No. 59575 of 2007, decided on 04th December, 2007 a Bench of Hon'ble Dr. Justice B.S. Chauhan (as His Lordship then was) and Hon'ble Mr. Justice Arun Tandon, has passed the following order:

œThe petitioners claim to be major and got married by their free will because of love and affection. Their marriage is not being accepted by the respondent nos. 3 who is the Father of petitioner no. 1 and thus harassing the petitioners. Petitioners have filed the present writ petition seeking protection.

In view of the above, we dispose of the writ petition with the observation that in case the petitioners have any grievance, they may move an application before the Senior Superintendent of Police, Allahabad for their protection. In case, such an

application is moved before the Senior Superintendent of Police, Allahabad, he may look into the grievance of the petitioners and do the needful. Needless to say, if the petitioners propose to lodge First Information Report against any person who is harassing, the same may be registered and necessary action may be taken in accordance with law as held by the Apex Court in the case of Lata Singh Vs. State of U.P. and Anr., AIR 2006 SC 2522.?

15. In the case of Bharti Arora and another v. State of U.P. and others, Writ-C No. 53307 of 2012, decided on 11th October, 2012, another Division Bench of this Court comprising Hon'ble Mr. Justice Amitava Lala, Acting Chief Justice (as His Lordship then was) and Hon'ble Mr. Justice Ashok Srivastava, has passed the following order:

œBoth the petitioners i.e. boy and girl are identified by Mr. Sushil Kumar, learned counsel appearing for the petitioners.

Marriage is definitely wishes of a boy and girl to continue with their conjugal relationship provided they have attained the age of marriage, as required by law. We have been fortified with several writ petitions in which more or less identical reliefs are claimed for protection of their marital relationship, which is allegedly being interfered with and harassed by their parents or relatives, who are private respondents. The writ jurisdiction is not made to resolve such type of dispute between the two private parties. We otherwise strongly believe family law is no law. It is a social problem, which can only be uprooted socially and not by the intervention of the writ Court in the garb of violation of Article 21 of the Constitution of India unless it is established beyond doubt.

If there is any real grievance of married couple against their parents or relatives who are allegedly interfering with their conjugal rights which goes to such extent that there is threat of life, they are at liberty to lodge any criminal complaint or file F.I.R. whichever is required under the law to the police and in case of refusal, may make appropriate application before the appropriate court of criminal law by way of applications under Sections 155 or 156 of the Criminal Procedure Code. Similarly, in case the parents or relatives, find that illegally their son or daughter was eloped for the purpose of marriage although he or she is underage or not inclined or they

are behaving violently, they are equally at liberty to take steps in a similar manner.

But, when neither of the actions are taken amongst each other, a fictitious application with certain vague allegations, particularly by the newly married couple, under writ jurisdiction of the High Court, appears to be circuitous way to get the seal and signature of the High Court upon their respective marriages without any identification of their age and other necessary aspects required to be done by the appropriate authority/authorities. It is well settled by now that every marriage is required to be registered by the appropriate registering authority upon due verification of the ages etc. of respective parties. We cannot also allow to develop the disputed questions of fact under the writ jurisdiction nor we can draw any inference by the colourful presence of the newly wedded couple in the Court as per the respective advices. If we do so, it will be wrong presumption by using excessive power of the Court in this jurisdiction.

However, where no F.I.R. has been lodged or necessary police actions are taken by either of the parties, it is expected that no coercive action could be taken against each other.

In case the party/parties approaches/ approach the appropriate court of law or the authority concerned, raising his/her/their grievances, the same will be considered strictly in accordance with law.

If this order is obtained by fraud or suppression of material facts, then the law will take its own course independently.

Accordingly, the writ petition is treated to be disposed of, however, without any order as to costs.?

16. The anguish expressed by the Supreme Court in the case of Bhagwan Dass (supra) is a matter of serious concern for our democratic polity. Organizing Khaps on the caste basis and implementing their decisions instantly will turn the democracy into mobocracy. It will turn India into a banana republic. As noticed by the Supreme Court, honor killing has become commonplace in Western Uttar Pradesh. If the tendency to overreach the rule of law is not nipped in the bud, it

would corrode the very foundation of our Constitution on which its grand edifice rests. The consequences are fraught with danger of collapse of our institutions and rule of law that will lead to anarchy.

17. It is axiomatic that India is much maligned for its caste system but a fleeting look at history will reveal that racial/caste discrimination was in existence in most of the countries and culture in one or the other forms. The word caste is derived from the Spanish and Portuguese word 'Casta'. Oxford dictionary defines it to mean 'Race, lineage or breed'. In all the ancient societies, like in Rome, people were classified according to their distinct functions. According to Social Scientist Damezil, Roman society was broadly comprised of three classes: (1) Priestly (Like Brahmins in India); (2) people associated with Army (Kshatriyas); and (3) People who were engaged in agriculture, production, craft, and commerce.

18. In Japan also, such positions were inherited. At the top were Kuge. The Emperors belonged to this class. Rest of the people were divided in four classes: (1) Sumrai (Associated with Arms); (2) Peasants; (3) Craftsmen; and (4) Merchants. These classes were hierarchical and endogamous. The merchants were treated lowest because they had no contribution in production. The Sumerai had authority to kill any member of lower class if they show any disrespect to them.

19. In France also there was an untouchable caste, Cagots. They were treated as inferior caste. The Cagots are also found in some parts of Spain. In Africa also, in some parts social positions are inherited and they are hierarchical. Some castes are treated like untouchable and are shunned while the others are respected and are endogamous. In Nigeria if a person is born in Osu caste, he is treated as out caste and ostracized. He has limited opportunities in spite of his merit and ability. West Africans artisans have suffered similar treatment. They are looked upon as inferior, despised by some people, their occupation is hereditary and they are deprived of all political power.

20. Similar class divisions on the ethnic basis exist in other African countries. The Mande societies in Ivory coast, Ghana and neighboring countries have social stratification system. The Jonow are descendants of slaves. Griots, Forgenorons, and Cordonniers are other castes based on similar basis.

21. The United States, a land of freedom and liberty, has a long history of discrimination on the ground of colour and creed. Their society was segregated on the basis of the colour. Dr. Martin Luther King, an ardent follower of Mahatma Gandhi, had a long journey for America to be a country for the people of all colour and creed. He led a historical march, like Mahatma Gandhi's Dandi March, on 28th August, 1963 to Washington. On the said date, in response to his call 2,50,000 people made peaceful and orderly march to Lincoln Memorial, Washington. In the American history, it was the largest demonstration but Dr. Martin Luther King did not call it struggle against the inequality or oppression against the Government, he called it a pilgrimage. He cautioned his followers that pilgrimage will be long and arduous and to maintain high moral ground it was necessary to observe non-violence. He articulated it as 'I have a dream?'. His famous speech on that day at Lincoln Memorial placed him in the rank of Lincoln and Franklin. Said historical march led to enactment of the Civil Right Act, 1964, Voting Right Act, 1965 and Fair Housing Act, 1968. For the first time, after more than a hundred and fifty years of independence, it ended discrimination against the racial, ethnic, racial, religious minorities and women. They got the voting right and it ended racial segregation in schools, workplace and provided facilities that served the general public.

22. Relevant it would be to mention that in his famous speech 'I have a dream?', there was not a single word of hatred against the whites. No complaint but an earnest desire which he wanted to send across the world was that everyone is born equal.

23. A chronological horizon of world history would reveal that most of the countries mentioned above, except a few African Countries, have successfully erased their blot of racial and other forms of discrimination with the help of better education, scientific advancement, scientific temper and humanism. It is matter of great concern and shame that our society is still resisting the change which has swept across the world in the era of globalization.

24. The Supreme Court, half a century ago, in the case of V.V. Giri v. D. Suri Dora and others, AIR 1959 SC 1318, speaking through Justice Gajendragadkar (as His

Lordship then was) lamented and observed as under:

23. In dealing with this contention it would be essential to bear in mind the broad and recognized features of the hierarchical social structure prevailing amongst the Hindus. It is not necessary for our present purpose to trace the origin and growth of the caste system amongst the Hindus. It would be enough to state that whatever may have been the origin of Hindu castes and tribes in ancient times, gradually status came to be based on birth alone. It is well known that a person who belongs by birth to a depressed caste or tribe would find it very difficult, if not impossible, to attain the status of a higher caste amongst the Hindus by virtue of his volition, education, culture and status. The history of social reform for the last century and more has shown how difficult it is to break or even to relax the rigour of the inflexible and exclusive character of the caste system. It is to be hoped that this position will change, and in course of time the cherished ideal of casteless society truly based on social equality will be attained under the powerful impact of the doctrine of social justice and equality proclaimed by the Constitution and sought to be implemented by the relevant statutes and as a result of the spread of secular education and the growth of a rational outlook and of proper sense of social values; but at present it would be unrealistic and utopian to ignore the difficulties which a member of the depressed tribe or caste has to face in claiming a higher status amongst his co-religionists.?

25. The Supreme Court has followed said decision recently in *Rameshbhai Dabhai Naika V. State Of Gujrat and others*, (2012) 3 SCC 400.

26. I am not oblivious of the fact that I have digressed a little from the issue but it is in the fond hope that our generation will see a egalitarian and casteless society. Such digression is under permissible limits as aptly observed by Justice Krishna Iyer (as his Lordship then was) in his illuminating judgement in *Ms. Maneka Gandhi v. Union of India and another*, (1978) 1 SCC 248, in following terms:

I have divagated a great deal into travel constitutionality in the setting of the story of the human journey, even though such a diffusion is partly beyond the strict needs of this case. But judicial travelling, like other travelling, is almost like 'talking with men of other centuries and countries'.

27. Now coming back to the case in hand, the principle of law that could be deduced from the above decisions is that if petitioners are major, they have unfettered right to choice of a person with whom they want to live. The Courts are not concerned whether their marriage is solemnized or not, as held by the Supreme Court in Gian Devi (supra) that if a girl has attained the age of majority, no one including her parents have right to object against her preference. In Bhagwan Dass (supra) the Supreme Court has issued a direction to circulate the copy of the judgment to the Registrars General/ Registrars of all the High Courts with a further direction to circulate the same to all the Judges of the Courts including Sessions Judges/ Additional Sessions Judges, and also to the Chief Secretaries, Home Secretaries, Directors General of Police of all the States to circulate the said judgment to all the Senior Superintendents of Police/Superintendents of Police of their States for their information.

28. It is distressing to note that in spite of the said direction of the Supreme Court, the Police is ignoring the law and the direction issued to them by the Apex Court. Thus, if any police officer harasses young couple, who are major and are living together voluntarily, such Police officer will be at the risk of disobeying the judgment of the Supreme Court in Bhagwan Dass (supra).

29. Therefore, if a complaint is made by the parents/relatives against a boy or a girl, the police officers shall have a limited role in such matter, under the law, that they can verify their age and whether they have decided to live together voluntarily. If they are educated and they produce their educational and other certificates, admissible under the law, from which it is evident that they have attained the majority and they are living with their free will then no police officer shall take any coercive action against them. If they do not have any documentary proof regarding their age and they come from the rural background and are illiterate/ semi-literate, the police officer can subject such boy or the girl to ossification test to verify their correct age, and he can also follow the other procedure permissible under the law.

30. If the police officer is satisfied that they are major then he has no authority to interfere with the living of the boy or girl and any such complaint made against the

boy or girl by the parents should be dealt with in accordance with law.

31. After careful consideration of the facts and circumstances of the case, I am of the view that both the petitioners are major and they are living with their free will. They are present in the Court. Therefore, a direction needs to be issued to respondents not to interfere in their peaceful living. Accordingly it is issued.

32. The writ petition is allowed.

33. No order as to costs.

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