

Allahabad High Court

Kamini Devi And Another vs State Of U.P. And 4 Others on 23 November, 2020

Bench: Anjani Kumar Mishra, Prakash Padia

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 9

Case :- WRIT - C No. - 11108 of 2020

Petitioner :- Kamini Devi And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Rajesh Kumar Dubey,Om Prakash Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Anjani Kumar Mishra,J.

Hon'ble Prakash Padia,J.

1. The petitioners have preferred this writ petition for a direction upon the respondents not to interfere in their peaceful living and also for protection of their lives and liberty.

2. The facts in brief as contained in the writ petition are that the petitioner no. 1 namely Kamini Devi is major and is aged about 24 years. The date of birth of petitioner no. 1 is 03.07.1996 as per Adhar Card. Petitioner no. 2 is also major aged about 28 years and date of birth of the petitioner no. 2 is 01.05.1992 as per Adhar Card. Petitioner no. 2 being major is doing agricultural work and is earned about Rs. 800/- per month. Since last one year the petitioners fall in love with each other and decided to Live-in relationship with each other without any compulsion or coercion. The respondent nos. 4 and 5 forcibly trying to solemnized the marriage of the petitioner no. 1 with old persons and against the wishes of the petitioner no. 1. When the petitioner no. 1 came to know that there family members are trying to illegally solemnized the marriage, the petitioner no. 1 have no option except to live in her personal interest and as such decided to live with petitioner no. 1 namely Ajay Kumar son of Nand Kishor with her own free will and without fear and pressure.

3. It is further stated in paragraph-6 of the writ petition that petitioners are living with each other from last six months happily but the respondent nos. 4 and 5 are not happy with the petitioners and trying to harass them. Due to the aforesaid reasons, it further reveals from the perusal of the record that a complaint was also filed by the petitioner no. 1 addressed to the Superintendent of Police, Jahanganj, District Farrukhabad stating all these facts on 17.03.2020 and with a request to provide necessary protection to the petitioners. It is argued that inspite of the fact that a complaint has already been lodged by the petitioner no. 1 before the Superintendent of Police, District Farrukhabad, till date no action has been taken on the same and the family members of the petitioner no. 1 are trying to harass the petitioners. It is further argued that in view of the law laid down by the Hon'ble Apex Court from time to time petitioners are legally entitled to Live-in relationship without any fear or pressure more specially when they are major. In view of the facts, since no action was taken by the authorities petitioners have preferred the present writ petition with the prayer to issue a mandamus commanding the respondent-authorities not to harass the petitioners in any manner in their peaceful life and personal liberty.

4. Live-in relationship is a relationship which has not been socially accepted in India, unlike many other countries. In the case of Lata Singh vs. State of U.P. reported in (2006) 2 SCC (Cri) 478, it was observed that a Live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in order to provide a remedy in civil law for protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriages, etc. We have few other legislations also where reliefs have been provided to women placed in certain vulnerable situations.

5. The matter in issue has already been dealt with in great detail by the Hon'ble Apex Court in the case of Indra Sharma vs. V.K.V. Sharma reported in (2013) 15 SCC page 755. The relevant paragraph of the aforesaid judgment paragraph 42 to 52 are reproduced below:-

42. Section 2(f) of the DV Act defines "domestic relationship" to mean, inter alia, a relationship between two persons who live or have lived together at such point of time in a shared household, through a relationship in the nature of marriage. The expression "relationship in the nature of marriage" is also described as defacto relationship, marriage - like relationship, cohabitation, couple relationship, meretricious relationship (now known as committed intimate relationship) etc.

43. Courts and legislatures of various countries now began to think that denying certain benefits to a certain class of persons on the basis of their marital status is unjust where the need of those benefits is felt by both unmarried and married cohabitants. Courts in various countries have extended certain benefits to heterosexual unmarried cohabitants. The legislatures too, of late, through legislations started giving benefits to heterosexual cohabitants.

44. In U.K. through the Civil Partnership Act, 2004, the rights of even the same-sex couple have been recognized. Family Law Act, 1996, through the Chapter IV, titled 'Family Homes and Domestic Violence', cohabitants can seek reliefs if there is domestic violence. Canada has also enacted the

Domestic Violence Intervention Act, 2001. In USA, the violence against woman is a crime with far-reaching consequences under the Violence Against Women Act, 1994 (now Violence Against Women Reauthorization Act, 2013).

45. The Interpretation Act, 1984 (Australia) has laid down certain indicators to determine the meaning of "de facto relationship", which are as follows:

"13A . De facto relationship and de facto partner, references to (1) A reference in a written law to a de facto relationship shall be construed as a reference to a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.

(2) The following factors are indicators of whether or not a de facto relationship exists between 2 persons, but are not essential--

(a) the length of the relationship between them;

(b) whether the 2 persons have resided together;

(c) the nature and extent of common residence;

(d) whether there is, or has been, a sexual relationship between them;

(e) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

(f) the ownership, use and acquisition of their property (including property they own individually);

(g) the degree of mutual commitment by them to a shared life;

(h) whether they care for and support children;

(i) the reputation, and public aspects, of the relationship between them."

46. The Domestic and Family Violence Protection Act, 2012 (Queensland) has defined the expression "couple relationship" to mean as follows":

"18. Meaning of couple relationship.-

1) * * *

2) In deciding whether a couple relationship exists, a court may have regard to the foll

a) the circumstances of the relationship between the persons, including, for example-

(i) the degree of trust between the persons; and

- (ii) the level of each person's dependence on, and commitment to, the other person;
 - b) the length of time for which the relationship has existed or did exist;
 - c) the frequency of contact between the persons;
 - d) the degree of intimacy between the persons.
- 3) Without limiting sub-section (2), the court may consider the following factors in deciding whether a couple relationship exists or not:
- a) Whether the trust, dependence or commitment is or was of the same level;
 - b) Whether one of the persons is or was financially dependent on the other;
 - c) Whether the persons jointly own or owned any property;
 - d) Whether the persons have or had joint bank accounts;
 - e) Whether the relationship involves or involved a relationship of a sexual nature;
 - f) Whether the relationship is or was exclusive.
- 4) A couple relationship may exist even if the court makes a negative finding in relation to any of the factors mentioned above.
- 5) A couple relationship may exist between two persons whether the persons are of the same sex or not.
- 6) A couple relationship does not exist merely because two persons date or dated each other.

47. The Property (Relationships) Act, 1984 of North South Wales, Australia also provides for some guidelines with regard to the meaning and content of the expression "de facto relationship", which reads as follows:

"4 De facto relationships.- (1) For the purposes of this Act, a de facto relationship is a relationship between two adult persons:

- (a) who live together as a couple, and
- (b) who are not married to one another or related by family.

(2) In determining whether two persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:-

- (a) the duration of the relationship,
- (b) the nature and extent of common residence,
- (c) whether or not a sexual relationship exists,

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties,

(e) the ownership, use and acquisition of property,

(f) the degree of mutual commitment to a shared life,

(g) the care and support of children,

(h) the performance of household duties,

(i) the reputation and public aspects of the relationship.

(3) No finding in respect of any of the matters mentioned in subsection (2) (a)-(i), or in respect of any combination of them, is to be regarded as necessary for the existence of a de facto relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

(4) Except as provided by section 6, a reference in this Act to a party to a de facto relationship includes a reference to a person who, whether before or after the commencement of this subsection, was a party to such a relationship."

48. "In *Marriage of Lindsay, In re, and Latham v. Hennessey* 87 Wn.2d 550 (1976), *Pennington v. Pennington*, the Courts in United States took the view that the relevant factors establishing a meretricious relationship include continuous cohabitation, duration of the relationship, purpose of the relationship, and the pooling of resources and services for joint projects. The Courts also ruled that a relationship need not be "long term" to be characterized as meretricious relationship. While a long term relationship is not a threshold requirement, duration is a significant factor. Further, the Court also noticed that a short term relationship may be characterized as a meretricious, but a number of other important factors must be present.

49. In *Stack v. Dowden* [2007] 2 AC 432, Baroness Hale of Richmond said:

"Cohabitation comes in many different shapes and sizes. People embarking on their first serious relationship more commonly cohabit than marry. Many of these relationships may be quite short-lived and childless. But most people these days cohabit before marriage..... So many couples are cohabiting with a view to marriage at some later date - as long ago as 1998 the British Household Panel Survey found that 75% of current cohabitants expected to marry, although only a third had firm plans: John Ermisch, *Personal Relationships and Marriage Expectations* (2000) Working Papers of the Institute of Social and Economic Research: Paper 2000-27. Cohabitation is much more likely to end in separation than is marriage, and cohabitations which end in separation tend to last for a shorter time than marriages which end in divorce. But increasing numbers of couples cohabit for long periods without marrying and their reasons for doing so vary from conscious

rejection of marriage as a legal institution to regarding themselves "as good as married' anyway: Law Commission, Consultation Paper No 179, Part 2, para 2.45."

50. In *MW v. The Department of Community Services* [2008] HCA 12, Gleeson, CJ, made the following observations:

"Finn J was correct to stress the difference between living together and living together 'as a couple in a relationship in the nature of marriage or civil union'. The relationship between two people who live together, even though it is a sexual relationship, may, or may not, be a relationship in the nature of marriage or civil union. One consequence of relationships of the former kind becoming commonplace is that it may now be more difficult, rather than easier, to infer that they have the nature of marriage or civil union, at least where the care and upbringing of children are not involved."

51. In *Lynam v. The Director-General of Social Security* (1983) 52 ALR 128, the Court considered whether a man and a woman living together "as husband and wife on a bona fide domestic basis' and Fitzgerald, J. said:

"Each element of a relationship draws its colour and its significance from the other elements, some of which may point in one direction and some in the other. What must be looked at is the composite picture. Any attempt to isolate individual factors and to attribute to them relative degrees of materiality or importance involves a denial of common experience and will almost inevitably be productive of error. The endless scope for differences in human attitudes and activities means that there will be an almost infinite variety of combinations of circumstances which may fall for consideration. In any particular case, it will be a question of fact and degree, a jury question, whether a relationship between two unrelated persons of the opposite sex meets the statutory test."

52. Tipping, J. in *Thompson v. Department of Social Welfare* (1994) 2 SZLR 369 (HC), listed few characteristics which are relevant to determine relationship in the nature of marriage as follows:

"(1) Whether and how frequently the parties live in the same house.

(2) Whether the parties have a sexual relationship.

(3) Whether the parties give each other emotional support and companionship.

(4) Whether the parties socialize together or attend activities together as a couple.

(5) Whether and to what extent the parties share the responsibility for bringing up and supporting any relevant children.

(6) Whether the parties share household and other domestic tasks.

(7) Whether the parties share costs and other financial responsibilities by the pooling of resources or otherwise.

(8) Whether the parties run a common household, even if one or other partner is absent for periods of time.

(9) Whether the parties go on holiday together.

(10) Whether the parties conduct themselves towards, and are treated by friends, relations and others as if they were a married couple."

6. Apart from the same Hon'ble Apex Court in a long line of decisions has settled the law that where a boy and a girl are major and they are living with their free will, then, nobody including their parents, has authority to interfere with their living together. Reference may be made to the judgements of the Supreme Court in the cases of Gian Devi v. The Superintendent, Nari Niketan, Delhi and others, (1976) 3 SCC 234; Lata Singh v. State of U.P. and another, (2006) 5 SCC 475; and, Bhagwan Dass v. State (NCT of Delhi), (2011) 6 SCC 396, which have consistently been followed by the Supreme Court and this Court, as well as of this Court in Deepika and another v. State of U.P. and others, 2013 (9) ADJ 534. The Supreme Court in Gian Devi (supra) has held as under: -

"7. ... 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."

7. Heard learned counsel for the petitioners and learned Standing Counsel for the State functionaries.

8. In view of the order proposed to be passed, there is no need to issue notice to private respondent.

9. With the consent of learned counsel appearing for the parties, this writ petition is being disposed of finally at this stage in terms of the Rules of the Court.

10. Having regard to the facts and circumstances of the case, we are of the view that the petitioners are at liberty to live together and no person shall be permitted to interfere in their peaceful living. As right to life is a fundamental right insured under Article 21 of the Constitution of India in which it is provided that no person shall be deprived of his right to life and personal liberty. In case any disturbance is caused in the peaceful living of the petitioners, the petitioners shall approach the Senior Superintendent of Police, Farrukhabad i.e. the second-respondent, with self attested computer generated copy of this order downloaded from the official website of High Court Allahabad, who shall provide immediate protection to the petitioners.

11. A liberty is granted to the private respondents that if the documents brought on the record are fabricated or forged, it will be open to them to file a recall application for recall of this order.

12. With the aforesaid observations, the writ petition is allowed. No order as to costs.

Order Date :- 23.11.2020 Swati