


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Writ Petition No. 1296/2023

1. Riyanshi Gothwal D/o Rajesh, Aged About 20 Years, Resident Of A-13, Harijan Basti, New Mount Road, Jaipur (Raj). Presently Resident Of 2/156 (Present Quarter No. 2/105) A.g. Colony, Bajan Nagar, Jaipur (Raj).
2. Aniket Panwar Son Of Ashok Kumar, Aged About 18 Years, Resident Of 2/156 (Present Quarter No. 2/105) A.g. Colony, Bajan Nagar, Jaipur (Raj).presently Resident Of 2/156 (Present Quarter No. 2/105) A.g. Colony, Bajan Nagar, Jaipur (Raj).

----Petitioners

Versus

1. State Of Rajasthan, Through Principal Secretary, Department Of Home Affairs, Government Of Rajasthan, Secretariat, Jaipur.
2. The Commissioner Of Police, Police Commissionerate, Jaipur.
3. Deputy Commissioner Of Police, Jaipur City (East), Jaipur.
4. Sho, Police Station Bajaj Nagar, Jaipur City (East), Jaipur.
5. Rajesh Son Of Ramkishor, Resident Of A-13, Harijan Basti, New Mount Road, Jaipur (Raj).
6. Santosh Devi W/o Rajesh, Resident Of A-13, Harijan Basti, New Mount Road, Jaipur (Raj).
7. Honey Son Of Rajesh, Resident Of A-13, Harijan Basti, New Mount Road, Jaipur (Raj).
8. Rajendra Son Of Ramkishor, Resident Of A-13, Harijan Basti, New Mount Road, Jaipur (Raj).
9. Ramkaran Sonwal Son Of Kaluram, Resident Of Shyampuri Colony, Khatiko Ki Mandi, Heeda Ki Mori, Jaipur.
10. Sunil Pacherwal Son Of Pooran, Resident Of Shyampuri Colony, Khatiko Ki Mandi, Heeda Ki Mori, Jaipur.
11. Sona Devi W/o Satyanarayan, Resident Of Purani Basti, Chandpole, Jaipur.

----Respondents

For Petitioner(s) : Mr. Shiv Shankar Choudhary, Adv.
For Respondent(s) : Mr. Prashant Sharma, Dy.GA

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

03/07/2023

1. Heard the parties.
2. This criminal writ petition has been filed under Article 226 of The Constitution of India for protection to life and personal liberty of the petitioners.
3. It is submitted that none of the petitioners are married to any one else. Both are major and in a live-in-relationship. The petitioners have approached this court for protection of their life and liberty as private respondents are not accepting and recognizing their relationship.
4. The law is well settled that privacy and liberty of individuals cannot be infringed by taking the law in one's hands. If there is allegation of violation of law by the aggrieved person then legal recourse should be adopted and recourse can never be at the whim of anyone.
5. *In Navtej Singh Johar Vs. Union of India (2018) 10 SCC 1,*

The Supreme Court said as follows:-

"The right to privacy enables an individual to exercise his or her autonomy, away from the glare of societal expectations. The realisation of the human personality is dependent on the autonomy of an individual. In a liberal democracy, recognition of the individual as an autonomous person is an acknowledgment of the State's respect for the capacity of

the individual to make independent choices. The right to privacy may be construed to signify that not only are certain acts no longer immoral, but that there also exists an affirmative moral right to do them."

6. *In Shafin Jahan Vs. Asokan K.M. 2018 (16) SCC 368, The Hon'ble Supreme Court said that " the social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible.*

7. *In Navtej Singh Johar Vs. Union of India (2018) 10 SCC 1, The Supreme Court said as follows:-*

"131. The duty of the constitutional courts is to adjudge the validity of law on well-established principles, namely, legislative competence or violations of fundamental rights or of any other constitutional provisions. At the same time, it is expected from the courts as the final arbiter of the Constitution to uphold the cherished principles of the Constitution and not to be remotely guided by majoritarian view or popular perception. The Court has to be guided by the conception of constitutional morality and not by the societal morality.

132. We may hasten to add here that in the context of the issue at hand, when a penal provision is challenged as being violative of the fundamental rights of a section of the society, notwithstanding the fact whether the said section of the society is a minority or a majority, the magna cum laude and creditable principle of constitutional morality, in a constitutional democracy like ours where the

rule of law prevails, must not be allowed to be trampled by obscure notions of social morality which have no legal tenability. The concept of constitutional morality would serve as an aid for the Court to arrive at a just decision which would be in consonance with the constitutional rights of the citizens, howsoever small that fragment of the populace may be. The idea of number, in this context, is meaningless; like zero on the left side of any number.

133. In this regard, we have to telescopically analyse social morality vis-a-vis constitutional morality. It needs no special emphasis to state that whenever the constitutional courts come across a situation of transgression or dereliction in the sphere of fundamental rights, which are also the basic human rights of a section, howsoever small part of the society, then it is for the constitutional courts to ensure, with the aid of judicial engagement and creativity, that constitutional morality prevails over social morality.”

8. Considering the constitutional right of the petitioners, let the State respondents ensure protection to the personal life and liberty of the petitioners.

(BIRENDRA KUMAR),J