

Case :- CRIMINAL MISC. WRIT PETITION No. - 20257 of 2022

**Petitioner :-** Dolly Gupta And 2 Others

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Diwakar Shukla

**Counsel for Respondent :-** G.A.

**Hon'ble Suneet Kumar,J.**

**Hon'ble Syed Waiz Mian,J.**

Heard learned counsel for the petitioners and learned AGA for the state and perused the record.

Present writ petition has been preferred for quashing the F.I.R. dated 28.11.2022, registered as Case Crime No. 0372 of 2022, under section 366 I.P.C., Police Station Madhiyahu, District Jaunpur.

The petitioners nos. 1 and 2 claim to be major as per their High School Certificate and Aadhar Card. It is pleaded that the first petitioner left her father's house on her freewill and she is living with the second petitioner. In this backdrop, the ingredients of the offence under Section 366 IPC is not made out. Since, the petitioner nos. 1 and 2 are major, they have a right to live together. In **Shafin Jahan v. Asokan K.M. & others, reported in 2018 SCC Online SC 343**, after stating the law pertaining to writ of Habeas Corpus, this writ has been considered as a great constitutional privilege or the first security of civil liberty. The Court made the following pertinent observations: -

*"28. Thus, the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge."*

The Court also emphasised due importance to the right of choice of an adult person which the Constitution accords to an adult person as under:

*"54. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. 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."*

## VERDICTUM.IN

55. *Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a Constitutional Court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the Court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law."*

Reliance has been placed on the decision rendered by Supreme Court in **Nandakumar & another vs. The State of Kerala & others, reported in (2018) 16 SCC 602**. The relevant portion of the decision is extracted:

*"For our purposes, it is sufficient to note that both appellant No. 1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that live-in relationship is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005."*

Having regard to the view taken in **Shafin Jahan** (supra), we are of the opinion that obviously as per the assertion made by way of affidavit attached to this petition, live-in-relationship has been claimed. The date of birth of both the petitioners specify them to be major and they claim their decision to be based upon voluntarily will/option. Consequently, since both are major, no authority or person should intervene or intercept their enjoyment of live-in-relationship.

The State respondents are directed to ensure protection of the life and liberty of the petitioners.

Having regard to the threat to the life of the petitioners, Senior Superintendent of Police, Kanpur Nagar, shall provide security to the petitioners.

Hence, considered the facts and circumstances of the case and nature of offence, the impugned F.I.R. is hereby quashed.

The writ petition stands allowed.

**Order Date :- 23.12.2022**

K.K. Maurya