

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 5180 of 2022

**Petitioner :-** Kapil Kumar

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

**Counsel for Petitioner :-** Sushil Kumar

**Counsel for Respondent :-** G.A., Santosh Kumar Yadav

**Hon'ble Ashwani Kumar Mishra, J.**

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

Affidavit filed by alleged Prashasak, Arya Samaj Kydganj, Prayagraj is taken on record. Stay vacation application alongwith counter affidavit filed by Santosh Kumar Shastri is also taken on record.

This is a serious matter. Though the petitioner before the Court claims that he has solemnized marriage with respondent no.4 and therefore lodgement of FIR against him is bad in law, but it is the claim of marriage, which itself troubles the Court. The petitioner's claim of marriage itself is based upon a marriage certificate issued by one Santosh Kumar Shastri claiming himself to be Pradhan of Arya Samaj Krishna Nagar, Prayagraj. He claims to have performed the marriage in his capacity as the Priest and has solemnized the marriage.

This Court is flooded with the writ petitions in which such certificates are issued by Santosh Kumar Shastri and a day would not pass when some of such certificates issued by person concerned is not made the basis for issuance of a marriage certificate.

While hearing the matter Santosh Kumar Shastri was restrained from issuing any marriage certificate by one of us (Hon'ble Ashwani Kumar Mishra, J.) in Writ-C No.35240 of 2016 on 10.8.2016 for reasons recorded therein, which is reproduced hereinafter:-

"This petition has been filed with the allegation that the petitioners have solemnized their marriage and the private respondents are interfering with rights of the petitioners. In support of the marriage, a certificate issued by Arya Samaj, Krishna Nagar, Prayag, executed by Sri Santosh Kumar Shastri, dated 25.7.2016, was annexed. This Court proceeded to pass following orders in the matter on 1.8.2016:-

"Petitioners claim that they are major and have got their marriage solemnised against the wishes of family, on account of which they are being harassed. In support of such contention, a certificate of marriage, issued by Pandit Santosh Kumar Shastri, Pradhan Arya Samaj Krishna Nagar, Prayag has been annexed.

Sri S.P.S. Chauhan as well as learned Standing Counsel point out that a Criminal case

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under Sections 498,323,504 and 506 I.P.C. being NCR No. 113 of 2016 has been got registered against the petitioners at P.S. Raya, District Mathura on 29.7.2016, copy of which has been placed on record.

Sri S.P.S. Chauhan, advocate has appeared on behalf of the mother of petitioner no.1 and he states that the petitioner no.1 is already married to one Dalveer, and infact no marriage has taken place and a false certificate has been issued. It is stated that even otherwise no valid marriage could be performed once petitioner no. 1 is already married. Learned counsel for the respondents submits that both the petitioners are resident of Mathura and appear to have illegally procured marriage certificate, which has no legal sanctity in the eyes of law.

Learned Standing Counsel also points out that in large number of writ petitions filed before this Court, marriage certificate issued by the same person i.e. Sri Santosh Kumar Shastri is relied upon, and it appears that certificates are being issued for mere asking without due verification of facts beyond any authority vested in him.

The marriage certificate is an important document to establish factum of marriage and also determines the future rights of the parties or those claiming through them. Such certificates, therefore, cannot be issued without due verification or performance of marriage ceremony, nor any body can be permitted to issue certificates for consideration on mere asking. It would, therefore, be appropriate to call upon Sri Santosh Kumar Shastri to appear before this Court on the next date fixed and to explain as to how many marriage certificates have been issued by him and also disclose his authority in law to issue such certificates.

Petitioner is permitted to implead 'Sri Santosh Kumar Shastri Arya Samaj Krishna Nagar, Prayag, R/o 529 KL Krishna Nagar (Kydganj) District Allahabad' as respondent no. 6.

Issue notice to respondent no. 6 by registered speed post within 48 hours. Let this matter appear once again as fresh on 10.8.2016, on which date respondent no. 6 shall personally remain present before this Court, alongwith his reply.

Till the next date of listing, in case petitioners face any genuine threat to their life and liberty, or they are harassed contrary to law as laid down in Lata Singh (supra), it shall be open for them to approach the Superintendent of Police of the District concerned, who shall take all steps as may be required in law to ensure that petitioners' life and liberty are not interfered with, keeping in view the observations made in Lata Singh(supra)."

Pursuant to the directions issued by this Court, respondent no.6 i.e. Sri Santosh Kumar Shastri has appeared before this Court and has produced the register, according to which, 38 marriages have been got solemnized by him between 15.7.2016 to 27.7.2016.

A perusal of the record goes to show that petitioners claimed their marriage to have been solemnized in the month of June, 2016 at Mathura. A certificate, however, has been issued by respondent no.6 stating that the marriage of petitioners has been solemnized on 25.7.2016. It is pertinent to note that both the petitioners are resident of Mathura and except for issuance of certificate of marriage, they do not apparently have any concern with Allahabad. A perusal of the register goes to show that in respect of persons, who are residing in different districts, marriage is shown to have been performed at Allahabad and certificates have been issued by respondent no.6. The certificate is issued on the basis of a register, which contains the description of the parties as well as various printed clauses. It records that Arya Samaj is not responsible for the marriage and the parties have been verified by the witnesses. The certificate, which has been issued to the present petitioners, shows that petitioners have been identified by one Sri Kishan Kumar, who is resident of Mathura, and another witness is Sri Vipin Kumar @ Ashutosh, who is resident of Allahabad. It is not known as to how a person residing at Mathura is personally known to respondent no.6 or to Sri Vipin Kumar @ Ashutosh, a resident of Allahabad, on whose identification, the marriage itself is stated to have been performed. The certificate clearly states that Arya Samaj has no responsibility of the certificate being issued. It is to be noticed that as per respondents, petitioner no.1 is already married with one Dalveer and her marriage is void.

Prima facie this Court finds that claim of marriage of petitioners at Allahabad is at variance with what has been pleaded in para 9 of the writ petition, according to which petitioners got married at Mathura. In case petitioners had already got married at

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Mathura, it is difficult to understand as to why a second marriage has been solemnized at Allahabad.

Learned Standing Counsel points out that more than 100 writ petitions have been filed of late on the basis of marriage certificate issued by respondent no.6. The certificate issued by respondent no.6 is also made the basis for issuance of a marriage certificate by the registrar concerned.

In the facts and circumstances, as have been brought on record, prima facie this Court finds that marriage certificates are indiscriminately being issued by respondent no.6 for consideration and without due verification of the parties. It is to be borne in mind that such certificates have vital consequences inasmuch as petitioners' marriage has been performed against wishes of the family and in the case of any future conflict except for the certificate issued by the respondent no.6, there is nothing on record to establish the factum of marriage. In none of the petitions, it is stated that petitioners are Arya Samaji and it seems that only marriage certificate is being provided by respondent no.6.

In such circumstances, it would be appropriate to direct respondent no.6 to file a detailed affidavit, explaining as to how many marriages have been performed by him and also submit details as to how persons have been identified when they are resident of other districts and the witnesses are also not personally known to him.

As prayed by learned counsel for the respondent no.6, ten days' time for filing counter affidavit is granted. Rejoinder affidavit, if any, may also be filed within a week thereafter.

List this matter on 30.8.2016, showing the name of Sri Vipul Tripathi, as counsel for the respondent no.6.

Till the next date of listing, respondent no.6 i.e. Sri Santosh Kumar Shastri is restrained from issuing any marriage certificate."

We are informed that the aforesaid writ petition has been dismissed for non-prosecution on 16.11.2016. The issues raised in the order dated 10.8.2016 does not appear to have been addressed, so far.

In the affidavit filed by Sri R.V. Mishra, Advocate, on behalf of Pramod Kumar Dwivedi, Prashasak, Arya Samaj Kydganj, Prayagraj, an order has been annexed of this Court passed in Criminal Revision No.4222 of 2015 in which the parties to the revision, which includes Santosh Kumar Shastri, have been restrained from entering in the institution. Operative portion of the order dated 20.1.2016 reads as under:-

" .....

It is made clear that the parties of the present revision shall not enter in the premises of the institution, until further order of this Court, and the Principal of the institution shall not allow any one to interfere in the running of the institution.

It is further directed that the District Magistrate, Allahabad shall also monitor the running of the institution personally-regularly, and not leave the same to the Principal of the institution.

List the matter again on 15.02.2016."

What troubles us is the issuance of marriage certificate by Santosh Kumar Shastri in respect of persons, who are not even

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known to him nor are identified by any responsible person. The said Santosh Kumar Shastri has been issuing certificates, which forms the basis for registration of marriage or for other similar purposes. In most of the these matters the girls are minor and on the basis of Aadhar Card the marriages are being registered. It is settled that Aadhar Card is based on the declaration made by the person himself/herself, as such in absence of any reliable material the same would not constitute any valid basis to determine the age.

Although Sri V.K. Upadhyay, learned Senior Counsel for the applicant Santosh Kumar Shastri states that it is on the basis of school certificate and declaration that the marriage certificates are issued but we are not inclined to prima facie accept such plea in view of the large number of petitions, which are being filed based only upon the Aadhar Card, which compels the Court to probe the issue further.

The manner in which persons from not only State of Uttar Pradesh but from the other States also are being issued marriage certificates, we are prima facie of the opinion that the purpose of issuing such certificate is merely to facilitate run away boys and girls to lend legitimacy to their claim without determining their identity and without ascertaining their age etc., with the sole purpose of securing protection for them.

In the event any future dispute arises between the parties it would be very difficult to determine the factum of marriage in the manner certificates are being issued by the person concerned. We may note that these young boys and girls enter into their relationships very often due to infatuation or other reasons, which may be for limited period. The difficulty we see for these youngsters is that if their relationships break, there is none to support them. The families distance them and apparently there are no other social security mechanism in place for these young girls. The Constitution respects their freedom but the Court, while granting them protection, also has the obligation to secure them from any possible ills, later.

It also appears that right of Santosh Kumar Shastri to issue such certificate was suspended by Arya Pratinidhi Sabha, Uttar Pradesh but the petitioner states that by a subsequent order the previous order has been recalled.

From the materials that have been placed before us, we feel that it is a serious matter, which requires a thorough investigation. We, therefore, direct the Senior Superintendent of Police, Prayagraj to get an investigation conducted in the manner and methodology of functioning of Arya Samaj Kydganj, Prayagraj

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through its alleged Pradhan Santosh Kumar Shastri while issuing marriage certificate. An enquiry would be got conducted as to whether the marriages in fact are being performed or it is just issuing empty certificates of marriage. Santosh Kumar Shastri is also directed to produce registers of all the marriages, which have been got solemnized by him over last five years, particularly ever since the specific restraint order was passed against him on 10.8.2016. The enquiry in the matter would be got conducted through an officer not below the rank of Circle Officer. The report of the enquiry conducted in the matter shall be placed on record by way of an affidavit filed by the Senior Superintendent of Police, Prayagraj, by the next date fixed. The possibility of an organized racket working for extraneous reasons cannot be ruled out, in which involvement/assistance of others are possible. We are, however, not expressing any opinion in the matter as we have directed the enquiry to be conducted in this regard. In the event the activities of the person are not found to be fair and just, it will be open for the authorities to initiate appropriate action, as may be warranted in law, against the person concerned.

List this matter before the appropriate Court on 8.8.2022.

The restraint order passed earlier against Santosh Kumar Shastri and also the Oath Commissioner, who has indiscriminately sworn the affidavit even before the marriage was allegedly performed, as has been noticed in our previous order passed in the present petition, shall continue.

The Register produced by Sri Gautam Baghel shall be returned for being presented before the concerned enquiry officer appointed by the Senior Superintendent of Police, Prayagraj, for the purpose of enquiry in the matter.

It shall be open for the parties to exchange their affidavits, in the meantime.

**Order Date :- 30.5.2022**

Anil