

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA
&
HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT PETITION NO. 26227 OF 2021

Between:-

RAHUL ALIAS GOLU S/O SHRI
NARESH RAHORA, AGED 25
YEARS, OCCUPATION STUDENT,
R/O KHATIK MOHALLA, POLICE
STATION PICHHORE, TEHSIL
PICHHORE, DISTRICT SHIVPURI
(MADHYA PRADESH)

.....PETITIONER

(BY SHRI SURESH AGRAWAL - ADVOCATE)

AND

1. STATE OF MADHYA
PRADESH THROUGH ITS
PRINCIPAL SECRETARY,
DEPARTMENT OF HOME,
MANTRALAYA VALLABH
BHAWAN, BHOPAL (MADHYA
PRADESH)

2. SUPERINTENDENT OF
POLICE, DISTRICT SHIVPURI

(MADHYA PRADESH)

3. ADDITIONAL DISTRICT
MAGISTRATE & CHAIRMAN, ONE
STOP CENTER, SHIVPURI,
DISTRICT SHIVPURI (MADHYA
PRADESH)

4. THE TOWN INSPECTOR,
POLICE STATION PICHHORE,
DISTRICT SHIVPURI (MADHYA
PRADESH)

5. ISTAQ KHAN S/O NOT
KNOWN, AGED ABOUT 50 YEARS,
R/O HOUSE NO.34, WARD NO.9,
PICHHORE KATI MOHALLA,
SHIVPURI (MADHYA PRADESH)

6. ARYA SAMAJ VIVAH MANDIR
TRUST (REGD) OFFICE SHOP NO.5
& 10, K-BLOCK MARKET,
KAVINAGAR, GHAZIABAD (UTTAR
PRADESH)

.....RESPONDENTS

*(SHRI M.P.S.RAGHUVANSHI – ADDITIONAL ADVOCATE
GENERAL WITH SHRI RAJESH SHUKLA – DY.
ADVOCATE GENERAL FOR RESPONDENTS/STATE,
SHRI BALWANT SINGH BILLOWRIA WITH SHRI
PRABHAT KUMAR SINGH – ADVOCATES FOR
RESPONDENT NO.6 AND SHRI FAISAL ALI SHAH –
LEARNED AMICUS CURIAE)*

Reserved on : 01/09/2022
Delivered on : 06/09/2022

This petition coming on for hearing this day, Hon'ble

Shri Justice Rohit Arya passed the following:

ORDER

This writ petition, under Article 226 of the Constitution of India, is at the instance of one Rahul alias Golu S/o Naresh Rahora R/o Tahsil Pichhore, District Shivpuri (M.P.), seeking writ of certiorari for quashment of order dated 6/9/2021(Annexure P/1) passed by respondent no.3 whereby the corpus Ms. Hina Khan D/o Istaq Khan/respondent no.5, who is also resident of Tahsil Pichhore, District Shivpuri (M.P.) is kept at *Swadhar Greh*, Morena; a Government run temporary residential accommodation, besides seeking writ of *habeas corpus* for production of corpus before this Court to ascertain her willingness as she is a minor and the petitioner is willing to keep her with him.

2. On 2/12/2021, a co-ordinate Bench of this Court was pleased to issue notice to respondent no.5, returnable in one week, whereas learned Additional Advocate General had

accepted notice for respondent nos. 1 to 4 in the Court. As petitioner pleads in paragraph 5.3 of the writ petition that he had run away with Ms. Hina Khan from Shivpuri and thereafter Ms. Hina Khan converted her religion from Muslim to Hindu at one Arya Samaj Vivah Mandir Trust (*“Vivah Mandir” for short*) having its Office at K-Block Market, Kavinagar, Ghaziabad (Uttar Pradesh) vide certificate of conversion issued by it on 17/9/2019 (Annexure P/3) and thereafter both of them got married at the same Vivah Mandir vide marriage certificate dated 17/9/2019 (Annexure P/4), it was found during the course of hearing on 10/1/2022 that the said Vivah Mandir was a necessary party. The then counsel for the petitioner Shri S.N.Seth undertook to implead the said Vivah Mandir as party respondent and pay process fee for service thereupon. However, on 18/1/2022, Shri Seth pleaded no instructions though on 10/1/2022 he had undertaken to implead the Vivah Mandir as a party. On that day, Shri M.P.S.Raghuvanshi submitted that such activity of conversion from one religion to

another is not carried out in temples; it is a serious matter and potential threat to peace and tranquility in the area. The abortive act of conversion by such self-styled Vivah Mandirs involves people from Hindu and Muslim community and may cause serious law and order problem, therefore, this Court may invoke *suo motu* jurisdiction and issue notice to the said Vivah Mandir. The prayer was accepted and Office was directed to issue notice to the Vivah Mandir. In the aforesaid backdrop, the said Vivah Mandir has been added as respondent no.6 on 21/3/2022.

3. On 16/6/2022, considering the seriousness and sensitivity of the matter, this Court framed 12 issues which read thus:-

1. Whether a self styled Trust allegedly registered as Arya Samaj Vivah Mandir Trust can solemnize marriage between a Hindu boy and a Muslim girl?
2. Whether the said Trust has authority in law to issue marriage certificate?
3. Whether the said Trust in its aims and objects can

indulge in such activities?

4. Whether the bylaws of the alleged Trust are duly ratified by the Registrar Public Trust or either under any Public Trust Act or other Act as the document doesn't reflect so ?

5. Whether on a mere declaration on affidavit or a notarized affidavit the Trust can convert religion of a Muslim girl as Hindu ?

6. Whether respondent No.6 is competent to issue a certificate of conversion as reflected from page 19 of the compilation.

7. Whether the alleged Arya Samaj Vivah Mandir Trust can accept such affidavit without verification and issue a certificate of marriage between the petitioner and Ms. Hina Khan daughter of Shri Istayak Khan endorsing conversion ?

8. Whether the affidavit of Ms. Hina Khan, resident of House No.34, Ward No.9, Mohalla Pichhore Shivpuri (M.P.) allegedly sworn before the President/Secretary Arya Samaj Vivah Mandir Trust Ghaziabad has evidentiary value as regards conversion from Muslim community to Hindu community and vice versa?

9. Whether the alleged Arya Samaj Vivah Mandir

Trust by itself can be held to be an Arya Samaj Mandir which is solely for the purposes of solemnization of marriage having no affiliation or permission by the State/National body of the Arya Samaj Mandir?

10. Whether the aforesaid act of seeking declaration of conversion of Ms. Hina Khan from Muslim community to Hindu community and thereafter solemnization of marriage with petitioner tantamounts to an illegal activity which may have severe penal consequences?

11. Whether such kind of vulnerable activity of so called Arya Samaj Mandir has serious impact on public order disturbing social fabric of the society ?

12. Whether an extensive inquiry by a senior police official is warranted into the conduct and affairs of the aforesaid alleged Arya Samaj Vivah Mandir Trust Ghaziabad as the vulnerability of the alleged Act of conversion of the marriage (religion) is well evident from the fact that the petitioner and Ms. Hina Khan, residents of Shivpuri are said to have solemnized the marriage in Ghaziabad (U.P.) and there is no identification or verification of their status by known persons?

This Court also appointed Shir Faisal Ali Shah, an Advocate of prominence of this Court as *amicus curiae* to assist the Court in the context of questions so framed with relevant literature and recitals of Holy Kuran.

Shri M.P.S.Raghuvanshi, learned Additional Advocate General also brought to the notice of this Court an order passed by Division Bench of the Allahabad High Court dated 30/05/2022 in Criminal Misc. Writ Petition No. 5180 of 2022 in the matter of similar nature of vulnerable activities ordering high level enquiry in the context of solemnization of marriages by so called Arya Samaj Vivah Mandirs. He also pointed out that hundreds of indiscriminate marriage certificates are issued to young boys and girls in a surreptitious manner by such marriage shops on payment of huge amount without verification of their age, identity and whereabouts. No record is maintained. Therefore, he prays for institution of high level enquiry into the affairs of respondent no.6.

This Court deferred the hearing at the request of learned

counsel for respondent no.6 Shri Balwant Singh Bilowria enabling him to seek instructions.

4. Respondent no.6/Vivah Mandir has filed counter affidavit, so also written submissions have been filed by Shri Faisal Ali Shah, learned *amicus curiae*.

5. Factual matrix, as pleaded in the writ petition, suggest that besides conversion and marriage (as mentioned in para 5.3 referred above), a missing person report was lodged on 17/9/2019 by respondent no.5 at Police Station Pichhore, District Shivpuri, registered as Crime No. 382/2019 for the offences punishable under sections 363, 366 and 376 of the IPC and Ss.5 and 6 of the POCSO Act, 2012. The same reads thus:-

“फरियादी इस्तियाक मोहम्मद जहूर खान ने उपस्थित थाना आकर जुबानी रिपोर्ट किया कि कल दिनांक 16.09.2019 को रात्रि के समय रोजाने की तरह खाना खा पीकर लगभग 11 बजे घर के सभी लोग सो गये थे मैं अलग कमरे में सो रहा था तथा मेरी पत्नी सबनम मेरी लडकी हिना व दो छोटे बच्चों के साथ अलग कमरे में सो रही थी दिनांक 17.09.2019 को सुबह करीब 5 बजे मैं तथा मेरी पत्नी सबनम जागी तो देखा कि मेरी दूसरे नम्बर की बेटी हिना खान उम्र 16 साल 5 महीने घर

में नहीं थी मैंने व मेरी पत्नी ने घर में व आस पड़ोस में काफी तलाश किया तो उसका कोई पता नहीं चला मुझे ऐसा संदेह है कि मेरे पड़ोस का लड़का गोलू उर्फ राहुल रहौरा पुत्र नरेश रहौरा मेरी बेटी को बहलाफुसला कर ले गया है । मेरी बेटी पीले से रंग का सलवार कुर्ता पहने हुये है, रंग सांवला, कद छोटा है। सो रिपोर्ट करता हूँ । कार्यवाही की जावे ।”

(Emphasis supplied)

Thereafter, it appears that the corpus was recovered. She filed a writ petition before this Court registered as W.P. No. 20131/2019 seeking protection. The Single Bench on 24/9/2019 had disposed of the said writ petition with the direction that in case petitioner appeared before Superintendent of Police, Shivpuri, then necessary steps, in accordance with law, would be taken after verifying her age, as well as, factum of marriage. In pursuance of the said order, corpus Ms.Hina Khan and the petitioner appeared before Superintendent of Police, Shivpuri and filed a representation.

As pleaded in the writ petition, the corpus Ms. Hina Khan then appeared at the Police Station and gave her statement. Thereafter, she also appeared before JMFC,

Pichhore, District Shivpuri and gave her statement to the effect that she had gone to Delhi along with the petitioner on 16/09/2019, wherefrom they went to Ghaziabad and solemnized marriage at Arya Samaj Mandir. After her recovery, apparently for the reason of disclosure of conversion from Muslim to Hindu religion and alleged marriage with the petitioner with the help of certificates (Annexures P/3 and P/4) issued by respondent no.6 which could give rise to disturbance in the area; a small town of Tahsil Pichhore, she was produced before the Additional District Magistrate who is also the *Mukhya Sanchetak*, One Stop Centre, Shivpuri. It further appears that looking to the sensitivity and seriousness of the acts, as indicated above, the learned Additional District Magistrate counselled Ms. Hina to go with her parents and family but as she refused, she was sent to One Stop Centre, from where she was sent to Swadhar Greh, Morena vide order (Annexure P/1). In the aforesaid backdrop of facts, petitioner Rahul has, therefore, filed this petition for quashment of the

said order and for her production before this Court to ascertain her willingness as mentioned above.

6. In the counter affidavit filed by respondent no.6, amongst others, a preliminary objection as to lack of territorial jurisdiction has been raised contending that conversion certificate (Annexure P/3) issued to corpus Ms. Hina Khan and marriage certificate (Annexure P/4) issued to corpus and the petitioner are by respondent no.6/Vivah Mandir located at Ghaziabad (Uttar Pradesh) and, therefore, no cause of action has arisen within the territorial limits of this Court for subjecting respondent no.6 to its jurisdiction under Article 226 of the Constitution of India. Though there is no averment in the return, however, oral submission was made that respondent no.6 is a Trust registered under the Indian Trust Act, 1882. It is further submitted that Ms. Hina Khan D/o Istaq Khan, as per her Aadhar Card since is major, she is free to profess and practice any religion she wants under Article 25 of the Constitution of India. She had submitted an affidavit (Annexure

R/4) before the President/Secretary of respondent no.6-Trust that she had converted herself into Hindu religion and also that she intended to marry the petitioner out of her free will and based on such affidavit, conversion certificate (Annexure P/3) and marriage certificate (Annexure P/4) have been issued. It is further submitted that respondent no.6 – a registered Trust, by virtue of its Aims and Objects particularly clause “O”, is entitled for arranging marriage ceremonies according to Vedic and Hindu rites and customs. Hence, no exception can be taken to her conversion to Hindu, certificate whereof has been issued by respondent no.6. Likewise, no exception can be taken to the marriage between the two as certified by respondent no.6.

With the the aforesaid submissions, learned counsel for the respondent no.6 prayed that no fault can be found either in conversion of Ms. Hina Khan to Hindu religion nor to the issuance of conversion certificate (Annexure P/3) and marriage certificate (Annexure P/4) by respondent no.6.

7. Shri M.P.S.Ragvhevanshi, learned Additional Advocate

General made following submissions:-

(1) Petitioner and corpus Ms.Hina Khan are admittedly residents of Pichhore, District Shivpuri. Challenge in this petition is to the order passed by Additional District Magistrate and *Mukhya Sanchetak*, One Stop Centre, Shivpuri dated 6/9/2021 (Annexure P/1). An FIR has been registered at Police Station Pichhore, District Shivpuri at Crime No. 382/2019 on 17/9/2019 with regard to missing of Ms. Hina Khan with allegation of abduction by petitioner. Petitioner has filed this petition with the description that Ms. Hina Khan holds a certificate of conversion (Annexure P/3) from Muslim religion to Hindu religion issued by respondent no.6 and likewise both of them have marital status by virtue of marriage certificate (Anenxure P/4) issued by respondent no.6.

Further, while referring to article 226(2) of the Constitution of India, it is submitted that since facts and circumstances of the case do suggest that major part cause of action has arisen within the territorial limits of this Court,

therefore, respondent no.6, though is situated at Ghaziabad (U.P.), is amenable to writ jurisdiction of this Court. The facts - petitioner and Ms. Hina Khan are residents of Tahsil Pichhore, District Shivpuri (M.P.); missing person report was lodged at Police Station Pichhore, District Shvipuri; the order (Annexure P/1) for keeping Ms. Hina Khan has been passed by the Additional District Magistrate and *Mukhya Sanchetak*, One Stop Centre, Morena (M.P.)- having direct nexus with the alleged certificate of conversion (Annexure P/3) and certificate of marriage (Annexure P/4), form relevant part of cause of action arisen within the territorial limits of this Court entitling it to examine the validity and legality of the certificates (Annexures P/3 and P/4). Under such circumstances, it cannot be said that this Court lacks the territorial jurisdiction to question the legal authority and competence of respondent no.6 to issue the certificates (Annexure P/3 and P/4). He, therefore, contended that this Court may exercise jurisdiction under Article 226 of the Constitution of India to review the

vulnerable activities of respondent no.6 in the context of conversion and marriage certificates.

(2) The photocopy of the alleged Trust Deed (Annexure R/1) does not disclose under which Act, the Trust is registered. There is no registration certificate. Even otherwise, the oral assertion that respondent no.6 is registered under the Indian Trust Act, 1882, is misconceived and misdirected as the very preamble of the said Act expounds that it is an Act to amend and define the law relating to private Trusts and Trustees. As such, the very existence of the alleged Trust is questionable and suspicious in nature.

(3) The Vivah Mandir/respondent no.6 neither has authority in law nor jurisdiction to issue certificates of conversion from one religion to another or marriage certificates. Even otherwise, the description of activities shown in the Trust deed neither provide for conversion of religion of a person and even clause “O” only talks of arranging marriage ceremonies and not about performance of marriages.

(4) The **Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968** relevant for the present case, *inter alia* defines conversion under **section 2(b)** to mean renouncing one religion and adopting another religion. **Section 5** makes it compulsory that whoever converts any person from one religion to another either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period after the ceremony as may be prescribed, **send an intimation to the District Magistrate of the district** in which the ceremony has taken place of the fact of such conversion in such form as may be prescribed. Failure of compliance of mandatory requirement of sub-section (1) shall entail **penal consequences**. As per **sub-section (2)** thereof, such person shall be punishable with imprisonment which may extend to one year or with fine which may extend to Rs.1000/- or with both.

It is submitted that no such intimation was given by

respondent no.6 to the concerned Authority though as per its own showing, it had performed the process of *Shuddhikaran* as contained in paragraphs 10, 11 and 15 of the counter affidavit. As such, respondent no.6 has made itself liable for penal action under sub-section (2) of S.5 of the Act.

Similar provision has been made in the recent Act No.5 of 29; Madhya Pradesh Freedom of Religion Act, 2021. S.10(1) of the Act provides that any person who desires to convert shall submit a declaration to that effect 60 days prior to such conversion in prescribed Form to the District Magistrate stating that he desires to convert on his own free will and without any force, coercion, undue influence or allurement. Likewise, under sub-section (2), if any religious priest intends to organize conversion, he shall also have to give notice of 60 days' to the concerned District Magistrate. Failure to comply with the aforesaid provisions entails penal consequences under S.10(4) of the Act. S.11 provides punishment for violation of any provision of the Act by an Institution or Organization. S.13

provides that notwithstanding anything contrary contained in the Code of Criminal Procedure, every offence committed under this Act shall be cognizable, non-bailable and triable by the Court of Session. Indeed S.17 of the Act has repealed the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 from the date of notification i.e. 27/3/2021, however the said Act of 1968 held the field on 17/9/2019 when conversion and marriage certificates (Annexures P/3 and P/4) were issued by respondent no.6. Similar Act has been enacted by the State of U.P. as Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021. Provisions of Ss. 8(1), 8(2), 8(5) and 8(6) are in *pari materia* to the aforesaid provisions of the Madhya Pradesh Freedom of Religion Act, 2021.

(5) The Hon'ble Supreme Court in the judgment dated 25/10/2007 rendered in the case of **Seema (Smt.) Vs. Ashwani Kumar ((2008)1 SCC 180)**, has made it mandatory for every State to frame rules for compulsory registration of marriages. The State of Uttar Pradesh has notified U.P. Hindu Marriage

Registration Rules, 1973. Rule 4 thereof provides that registration of marriage is compulsory before the Registrar as defined under section 2(e) to mean Registrar of the District appointed under section 6 of the Registration Act or the Office performing the duties of a Registrar under sections 10 and 11 of the Act.

In Madhya Pradesh, after the pronouncement of judgment in the case of **Ashwani Kumar (Supra)**, State of M.P. has framed the Madhya Pradesh Compulsory Registration of Marriages Rules, 2008. S.7 thereof makes it compulsory for registration of marriages. The Registrar upon scrutiny of the documents before it, may not register the marriage *inter alia* if satisfied or has reason to believe that the marriage between the parties is not performed in accordance with law for the time being in force, or, the marriage between the parties is not performed in accordance with the personal law of the parties, or, the identity of the parties and solemnization of marriage is not established beyond reasonable doubt and may call upon the

parties to produce such further information or if deemed necessary may refer the papers for verification to the local police station.

(6) The Arya Marriage Validation Act, 1937, under section 2 provides for validation of marriage between **two Arya Samajists** and not the marriage of the kind in question, where on the one hand conversion certificate is issued to Ms. Hina Khan converting her from Muslim to Hindu religion and on the same day, marriage certificate was issued without declaration and verification that both of them are Arya Samajists.

(7) The alleged act of conversion and marriage, in fact, are classic instances of fraud and mis-representation alluring the ignorant young boys and girls with issuance of illegal certificates of conversion and marriage. It is a public wrong and a serious threat to public order and social fabric of the country. As such, respondent no.6 has made itself liable for penal action under section 464, IPC.

(8) The certificate of marriage can be issued by an Authority

competent under law either under the Special Marriage Act or under the provisions of Compulsory Registration of Marriages Rules. In the present case, neither respondent no.6 is entitled to nor has authority in law to issue the certificate of marriage. Learned counsel refers to the order passed by a Division Bench of this Court on 17/12/2021 in W.A. No. 95 of 2021 to submit that this Court in similar circumstances has passed an order, operative portion whereof reads thus:-

“Upon hearing learned counsel for the parties, this Court finds substantial force in the submissions advanced by Shri Raghuvanshi, learned Additional Advocate General. No society much less instant marriage society in law is permitted to issue a certificate of marriage for want of any enactment holding the field except Special Marriage Act, 1954 for which the Competent Authority may issue certificate but after compliance of the provisions contained under the said Act. Therefore, respondent No.5 has rightly been held to be not a body with legal authority to issue marriage certificates for alleged marriages.”

The said order is subject matter of Special Leave to Appeal (C) No. 5315/2022. The Hon'ble Supreme Court on 4/4/2022 issued notices and has passed the following interim order:-

“Issue notice.

It is submitted by Mr. Shyam Divan, learned senior counsel for the petitioner that the petitioner is strictly following the guidelines evolved which have been set out from Page Nos. 34 to 40 (Annexure – P5).

Subject to the petitioner's strictly adhering to the said guidelines, there will be an interim stay as prayed for till the next date of hearing.

The petitioner is permitted to take notice of Dasti also.

List on 2nd May, 2022.”

Guidelines 8,9 and 13 as set forth in pages 34 to 40 (Annexure P-5) read thus:-

“8. Marriage ceremony be solemnized by way of Shaptadi purely as per Vedic System.

9. Information regarding solemnization of every marriage in writing must be sent to the Madhya Bhartiya Arya Pratinidhi Sabha within 7 days from the date of solemnization of marriage.

13. Many persons have opened their shops in the name of Arya Samaj, where marriage ceremonies are performed. Such persons do not have ideology similar to that of Arya Samaj and have no connection with Arya Samaj. If there is information regarding any such person or organization then kindly intimate the undersigned about them.”

These conditions mentioned above are part of the detailed conditions circulated by Prakash Arya, General Secretary,

Madhya Bhartiya Arya Pratinidhi Sabha, Bhopal. It is submitted that there is nothing on record to suggest that respondent no.6 is either affiliated to or is part of Madhya Bhartiya Arya Pratinidhi Sabha. There is also nothing on record that condition no.9 has been complied with. In fact the activities of respondent no.6 clearly fall within clause 13 above. As such, the impugned certificate of marriage is contrary to the interim order passed by the Hon'ble Supreme Court, hence illegal.

With the aforesaid submissions, it is contended that the conversion certificate (Annexure P/3) and marriage certificate (Annexure P/4) are *dehors* any authority of law and are liable to be set at naught.

8. Shri Faisal Ali Shah, learned *amicus curiae*, while adopting the submissions advanced by learned Additional Advocate General, submitted that respondent no.6/Vivah Mandir does not have any authority in law to issue conversion

certificates and solemnize marriage. While referring to the Trust deed (Anenxure R/1), he contended that it is apparently clear therefrom that the Trust does not have any bylaws or any right or power to solemnize marriages, conduct conversions and issue certificates in this regard. As such, the act done by respondent no.6 is inculpatory under the provisions of section 464, IPC.

9. Heard, learned counsel for the parties.

10. Before advertng to the point in issue, it would be expedient to dilate upon the preliminary objection raised by learned counsel for respondent no.6 with regard to territorial jurisdiction of this Court to exercise powers under Article 226 of the Constitution to judicially review the validity of conversion and marriage certificates (Annexures P/3 and P/4) issued by it. For ready reference, Article 226(2) is reproduced below:-

“(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any

High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories”

Admittedly, petitioner and the corpus Ms.Hina Khan are the residents of Pichhore, District Shivpuri. An FIR has been registered against the petitioner at Police Station Pichhore, District Shivpuri on 17/9/2019 for the offences punishable under sections 363 and 366 of the IPC. The corpus Ms.Hina Khan, in her statement, recorded before Judicial Magistrate First Class, Pichhore, has revealed that she wanted to marry the petitioner and, therefore, had eloped with him from her house to Delhi and then to Ghaziabad, where they solemnized the marriage after her conversion to Hindu religion at respondent no.6/Vivah Mandir. After her recovery, she was produced before the Additional District Magistrate and *Mukhya Sanchetak*, One Stop Centre, under whose order dated 6/9/2021 (Annexure P/1) she has been sent to Swadhar Greh, Morena. With support of

certificate of conversion (Annexure P/3) and certificate of marriage (Annexure P/4), petitioner Rahul has filed this petition seeking quashment of order (Annexure P/1) and for production of Ms. Hina Khan before this Court. Indeed, the aforesaid sequence of facts revolving around issuance of certificates (Annexure P/3 and P/4) give rise to substantial part of cause of action within the territorial limits of this Court to exercise jurisdiction under Article 226 of the Constitution to judicially review the said certificates. In this regard, the Apex Court in the case of **Alchemist Ltd. and another Vs. State Bank of Sikkim and others ((2007)11 SCC 335)**, has held as under:-

“37. From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant-petitioner, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the Court, the Court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a

'part of cause of action', nothing less than that”

(Emphasis supplied)

In the above said backdrop, it is well nigh clear that this Court, indeed, has jurisdiction against respondent no.6 in the instant case and thus its objection as to lack of territorial jurisdiction pales into insignificance, accordingly rejected.

11. In the instant case, respondent no.6/Vivah Mandir has issued conversion certificate of Ms. Hina Khan from Muslim religion to Hindu as Annexure P/3 and marriage certificate of petitioner and Ms. Hina Khan as Annexure P/4. The Trust Deed (Annexure R/1) enlists twelve aims and objects and the one that comes a bit close to the aforementioned acts of respondent no.6, is only Clause “o” which declares *to arrange marriage ceremonies according to the Vedic and Hindu rites and customs*. The act of issuing conversion certificate is certainly way beyond the aims and objects of the respondent no.6/Trust. Further, from the Trust Deed (Annexure R/1), it is apparent that

the Trust does not have any bylaws empowering it to conduct such conversions or issue such certificates. That apart, issuance of conversion and marriage certificates by respondent no.6 only on the strength of affidavit of Ms. Hina Khan without verification of relevant facts even in the wake of a criminal case registered against the petitioner at Police Station Pichhore, District Shypuri, definitely come within the realm of suspicious and vulnerable activities apparently carried out for collateral purposes. Besides, it cannot be lost sight of that petitioner and the corpus are both domicile of Madhya Pradesh and, therefore, the said act of issuing conversion certificate is also in stark violation of section 5 of the Madhya Pradesh Dharma Swatantrya Adhinyam, 1968 that mandates intimation to the District Magistrate and also entails penal provision for its violation under sub-section (2). So far as issuance of marriage certificate (Annexure P/4) is concerned, clause “o”, as indicated above, only talks of arranging marriage ceremonies according to hindu rites and customs and not performing/solemnizing

them to issue marriage certificates. The Authorities empowered under an enactment or Rules are only competent to issue marriage certificates like those under the Special Marriage Act and Compulsory Registration of Marriage Rules. There is no provision for issuance of marriage certificates under the Hindu Marriage Act. The said Act recognizes rituals and ceremonies as legal sanctions for performance of marriage as per *Saptapadi* (Kindly see Ss.5 & 7 of the Hindu Marriage Act). There is no averment in the petition with regard to observance of such necessary rituals. Further, neither there is any evidence nor statement on affidavit that petitioner and Ms. Hina Khan are Arya Samajists, making the marriage vulnerable in terms of S.2 of the Arya Marriage Validation Act, 1937. It is also relevant to mention that the Apex Court vide interim order dated 17/12/2021 passed in Special Leave to Appeal No. 5315/2022 has directed strict adherence to the guidelines set out from page nos. 34 to 40 (Annexure P/5), guideline 9 whereof clearly lays down that information regarding solemnization of every

marriage in writing must be sent to the Madhya Bhartiya Arya Pratinidhi Sabha within 7 days from the date of solemnization of marriage. In the instant case, there is nothing on record to suggest that either respondent no.6/Vivah Mandir is affiliated to or recognized by Madhya Bharat Arya Pratinidhi Sabha or had sent intimation to it in terms of guideline 9 above. Not only this, there is no averment to the effect that the said marriage has been registered either in Madhya Pradesh in compliance of the provisions of Rule 3 of the Madhya Pradesh Compulsory Registration of Marriage Rules, 2008, or for that matter, in Uttar Pradesh under Rule 4 of the Hindu Marriage Registration Rules, 1973.

At this stage, it is pertinent to observe that there is substantial force in the submissions of Shri Raghuvanshi that the alleged Trust deed does not disclose as to under which provision the respondent no.6/Trust is registered. There is no registration certificate on record. As a matter of fact, the Indian Trust Act, 1882 begins with an exposition that it is an Act to

define and amend the law relating to Private Trusts and Trustees. Further, the Apex Court in the case of **Sheikh Abdul Kyum Vs. Mulla Alibhai (AIR 1963 SC 309)** has observed that section 1 of the Indian Trusts Act makes provisions of the Act inapplicable to public or private religious or charitable endowments. In the instant case, the objectives as declared in the Trust deed (Anenxure R/1), do not suggest that the Trust falls within the domain of “Private Trusts”, rather appears to be a religious endowment. As such, the Trust deed appears to be suspicious and serious question arises as regards its existence in the eyes of law.

In view of the aforesaid, this Court has no hesitation in holding that the conversion certificate (Annexure P/3) and marriage certificate (Annexure P/4) are without any authority of law and, hence, null and void. In fact, the said activities of respondent no.6/ Vivah Mandir, tantamount to running marriage shops on commercial lines, and, are therefore vulnerable in the teeth of guideline 13 (Supra). The same are a

serious threat to the sanctity attached to marriages recognized under personal laws, particularly Hindu Marriage Act.

In the result, question nos. 1 to 9 formulated above are answered in the negative, while those numbered 10 to 12 are answered in the affirmative.

12. At this juncture, it is imperative to observe that the nefarious activities of respondent no.6 in converting people from one religion to another without any authority of law, are not only detrimental to the social fabric and public order but also have potential to trigger mass unrest which may result into communal tension and riotous activities affecting ease of life and communal harmony. Considering these factors and the sensitivity of the issue involved, this Court is constrained to exercise its extraordinary constitutional jurisdiction, under Article 226 of the Constitution, to checkmate such situation and its recurrence in future at the hands of respondent no.6.

Looking to the nature of activities under reference such as conversion of a Muslim girl to Hindu religion, found to be

illegal and vulnerable in public domain, Senior Superintendent of Police, Ghaziabad is directed to get an investigation done for verification of existence/constitution and members of the respondent no.6/Vivah Mandir Trust, as also into its activities/methodology of functioning including books of accounts and records, if any, of the alleged activities and thereafter suitable corrective measures be taken as per law and, if need be, also forward the enquiry report to the competent Authority under the relevant Trust Act to initiate action against the so called Trust/respondent no.6 in accordance with law.

Before parting with the case, it is notable that looking to the sensitivity of the issue, corpus Ms. Hina Khan has been kept at Swadhar Greh, Morena vide order dated 6/9/2021 (Anexure P/1) passed by Additional District Magistrate and *Mukhya Sanchetak* One Stop Centre, Shivpuri. The Additional District Magistrate is directed to arrange for an in-camera video-graphed meeting of the corpus with her parents within one week from today and, thereafter, despite meeting if corpus

Ms. Hina Khan, who is major, still is not inclined to go with her parents, she shall be set free forthwith to go as per her wishes.

With the aforesaid, this writ petition stands disposed of.

We record our appreciation for the valuable assistance given by learned *amicus curiae* Shri Faisal Ali Shah.

A copy of this order be sent to Senior Superintendent of Police, Ghaziabad for strict compliance.

(Rohit Arya)
Judge

(Milind Ramesh Phadke)
Judge

(and)