

**Court No. - 42**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 890 of 2024

**Petitioner :-** Deepanshi And Another

**Respondent :-** State Of Up And 2 Others

**Counsel for Petitioner :-** M J Akhtar, Sarita Mishra

**Counsel for Respondent :-** G.A., Hemendra Pratap Singh

**Hon'ble Mahesh Chandra Tripathi, J.**

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

1. Heard learned counsel for the petitioner and learned AGA for State respondents.
2. Present writ petition has been preferred for quashing the FIR dated 5.12.2023 being Case Crime No.0783 of 2023 under Section 379, 120-B, 366 IPC & 3/5 (1) U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, P.S. Bannadevi, Distt. Aligarh and for a direction to respondents not to arrest the petitioners pursuant to impugned FIR.
3. On the matter being taken up on 4.3.2024, the Court had proceeded to pass the following order:-

*"1. Heard learned counsel for the petitioners and Shri G.P. Singh, learned AGA-1 for State respondents.*

*2. Present writ petition has been filed praying to quash the impugned First Information Report dated 5.12.2023 registered as Case Crime No. 0783 of 2023 under Section 379, 120-B, 366 IPC & 3/5(1) U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, P.S. Bannadevi, Distt. Aligarh and for a direction to respondents not to arrest the petitioners pursuant to impugned FIR.*

*3. Present matter relates to inter religion marriage. It is contended that both the petitioners are major and have married with each other out of their own free will. The marriage has also been registered under the Special Marriage Act. The marriage registration certificate dated 8.8.2022 is also appended as Annexure No.5 to the writ petition. Learned counsel for the petitioners, in support of his submissions, has placed reliance on the judgments of Hon'ble the Apex Court in Sachin Pawar & Anr. v. State of U.P. & Ors., Criminal Appeal No.1142 of 2013 dt. 2.8.2013 and Nandakumar & Anr. v. The State of Kerala & Ors., Criminal Appeal No.597 of 2018 dt. 20.4.2018.*

*4. It is informed that till date the statement of first petitioner under Section 164 CrPC has not been recorded. It is also alleged that as there is threat perception to the life of petitioners at District Aligarh, as such the statement of first petitioner may be directed to be recorded at Prayagraj.*

*5. Learned AGA-I, on the other hand, states that the investigation is in progress but there is non-cooperation in the ongoing investigation in the matter.*

*6. Considering the facts and circumstances of the case, prima facie case is made out in favour of the petitioners. Let the the Investigating Officer produce the petitioner no.1 before the Chief Judicial Magistrate, Prayagraj for recording her statement under Section 164 Cr.P.C. on 6.4.2024. The Chief Judicial Magistrate shall record the statement of petitioner no.1 under Section 164 Cr.P.C. on the date fixed and produce the said statement in sealed cover before this Court through Shri G.P. Singh,*

learned AGA-I on 11.4.2024.

7. List this matter on 11.4.2024.

8. Till the next date of listing, the respondents are restrained to arrest the petitioners pursuant to the impugned F.I.R. subject to cooperation in the on-going investigation."

4. In response to the aforesaid order, the Chief Judicial Magistrate, Prayagraj has recorded statement of the petitioner no.1 under Section 164 Cr.P.C. and sent the said statement before this Court in a sealed envelope. The said envelope was opened in the presence of learned counsel for the parties. In her statement, the petitioner no.1 has stated that she was working in Indian Chamber of Food & Agriculture, New Delhi. She was beaten up by her father. She solemnized marriage with petitioner no.2 under Special Marriage Act on 8.8.2022. Present marriage is first marriage of both the petitioners. She has also categorically stated that till date both the parties have not changed their religion and the version of the first information report is concocted and false. She wants to reside along with her husband. She has also shown apprehension of threat to her life.

5. After perusal of statement of petitioner no.1, the same was again put in sealed cover and handed over to Shri G.P. Singh, learned AGA-1 for being transmitted to the Chief Judicial Magistrate, Prayagraj. After receiving the same, the Chief Judicial Magistrate, Prayagraj shall send the said statement to the Chief Judicial Magistrate, Aligarh for putting it on record.

6. Considering the facts and circumstances of the case, we find that both the petitioners are major. From the statement of petitioner no.1 under Section 164 CrPC, it is clear that she is living voluntarily in the company of the petitioner no.2. Once the age of the victim girl is not in dispute, the offence as alleged against the petitioners is not made out as victim had left her home in order to live with the petitioner no.2.

7. We make it clear that the question in the present petition is not about the validity of marriage of two individuals i.e. petitioners no.1 & 2. Rather, the issue is about the life and liberty of two individuals in choosing a partner or their right to freedom of choice as to with whom they would like to live.

8. The Division Bench of this Court in the case of **Salamat Ansari & others vs. State of UP & others** reported in 2020 SCC Online All 1382 while dealing with the similar question has observed that the right to choose a partner irrespective of caste, creed or religion, is inherent under right to life and personal liberty, an integral part of the fundamental right under Article 21 of the Constitution of India. It was further observed that an individual on attaining majority, is statutorily conferred with the right to choose a partner, which if denied would not only affect his/her human right, but also his/her right to life and personal liberty guaranteed under Article 21 of the Constitution of India.

9. The observations of the Division Bench in paragraph '8' of the said decision are pertinent to be quoted hereunder:

*"8. We do not see Priyanka Kharwar and Salamat as Hindu and Muslim, rather as two grown up individuals who out of their own free will and choice are living together peacefully and happily over a year. The Courts and the Constitutional Courts in particular are enjoined to uphold the life and liberty of an individual guaranteed under Article 21 of the Constitution of India. Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty. Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals. We fail to understand that if the law permits two persons even of the same sex to live together peacefully then neither any individual nor a family nor even State can have objection to relationship of two major individuals who out of their own free will are living together. Decision of an individual who is of the age of majority, to live with an individual of his/her choice is strictly a right of an individual and when this right is infringed it would constitute breach of his/her fundamental right to life and personal liberty as it includes right to freedom of choice, to choose a partner and right to live with dignity as enshrined in Article 21 of the Constitution of India."*

10. In view of the above discussion, we are of the considered opinion that both the petitioners are major and the petitioner no.1 has come up with the categorical stand that she had left her home with the petitioner no.2 willingly and is living with him as wife and the marriage has also been solemnized under the Special Marriage Act on 08.08.2022, which is not disputed. She has also categorically stated in her statement under Section 164 Cr.P.C. that both the petitioners have not changed their respective religion.

11. The Apex Court in the case of **B.S. Joshi v. State of Haryana and others**, 2003(4) SCC 675 has held that in case the matrimonial dispute has come to an end, under a compromise/settlement, between the parties, then notwithstanding anything contained under Section 320 IPC there is no legal impediment for this court to quash the proceedings of Section 498-A I.P.C etc, which has matrimonial flavour under its powers in view of the recorded settlement between the parties. The Apex Court in the case of **Gian Singh v. State of Punjab**, 2012(10) SCC 303 has held in para-61 that;

*"the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences Under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil favour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In*

*other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."*

12. In view of the above, the writ petition succeeds and is **allowed**. The impugned FIR dated 5.12.2023 being Case Crime No.0783 of 2023 under Section 379, 120-B, 366 IPC & 3/5 (1) U.P. Prohibition of Unlawful Conversion of Religion Act, 2021, P.S. Bannadevi, Distt. Aligarh as well as all consequential proceedings are hereby quashed.

13. We, however, clarify that while deciding the present petition, we have not looked into the validity of marriage of the petitioners.

**Order Date :- 13.3.2024**

RKM