

WWW.LIVELAW.IN
IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL MISC.APPLICATION NO. 21877 of 2019
With
R/CRIMINAL MISC.APPLICATION NO. 342 of 2020**

=====

SURESHBHAI HATHIBHAI KHANT
Versus
STATE OF GUJARAT

=====

Appearance:

MR IM PANDYA(546) for the Applicant(s) No. 1,2,3,4
MR NM KAPADIA(394) for the Respondent(s) No. 2
MS MONALI BHATT, ADDL. PUBLIC PROSECUTOR(2) for the
Respondent(s) No. 1

=====

CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 18/06/2021

COMMON ORAL ORDER

1. Heard Mr. I.M. Pandya, learned advocate for the applicants, Ms. Monali Bhatt, learned APP for the respondent No.1-State and Mr. Nimesh Kapadia, learned advocate for the respondent No.2.

2. Mr. Nimesh Kapadia, learned advocate appearing on behalf of the respondent No.2 has submitted that an Entry No.23/55 at Serial No.52 was noted by Vastrapur Police Station, Ahmedabad, which clarifies that the daughter of Vikram has appeared willingly and stated before the police that she had her own volition gone out of the house since her father wanted to get her marry to a person which is not approved by

WWW.LIVELAW.IN

her. It appears that the statement of the daughter of Vikrambhai Khant was recorded on 23.10.2019 at Virpur Police Station in presence of woman constable Tulsiben Valjibhai.

3. In the case of **Lata Singh vs. State of U.P. And another, 2007(1) GLH 41** has held and observed as under:

“This is a free and democratic country, and once a person becomes major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one or subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.”

4. It is unfortunate to note that the parties in both the matters belongs to same community. The daughter of Vikrambhai is major; she has right to decide about her marriage and her future. The community members appears to have snatched away her right and entered into violence and causing harassment which act are actually required to be condemned. The police cannot be prevented from investigating such issue. Such issue in the case of **Shakti Vahini vs. Union of India, (2018) 7 SCC 192** the Hon'ble

WWW.LIVELAW.IN

Supreme Court in para 55.1 has laid down the preventive steps to be taken by the State Government and the police authority, and in the said judgment, punitive measures in failure of the police or District Officer to comply with the directions are also laid down. The necessary observations made in Shakti Vahini (supra) is abstracted below:

“51. We may note with profit that honour killings are condemned as a serious human rights violation and are addressed by certain international instruments. The Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence addresses this issue. Article 42 reads thus:-

“Article 42 – Unacceptable justifications for crimes, including crimes committed in the name of so-called “honour”

(1) Parties shall take the necessary legislative or other measures to ensure that, in criminal proceedings initiated following the commission of any of the acts of violence covered by the scope of this Convention, culture, custom, religion, tradition or so-called “honour” shall not be regarded as justification for such acts. This covers, in particular, claims that the victim has transgressed cultural, religious, social or traditional norms or customs of appropriate behavior.

(2) Parties shall take the necessary legislative or other measures to ensure that incitement by any person of a child to commit any of the acts referred to in paragraph 1 shall not diminish the criminal liability of that person for the acts committed.”

52. Once the fundamental right is inherent in a person, the intolerant groups who subscribe to the view of superiority class complex or higher clan cannot scuttle the right of a person by leaning on any kind of philosophy, moral or social, or self-proclaimed elevation. Therefore, for the sustenance of the legitimate rights of young couples or anyone associated with them and keeping in view the role of

this Court as the guardian and protector of the constitutional rights of the citizens and further to usher in an atmosphere where the fear to get into wedlock because of the threat of the collective is dispelled, it is necessary to issue directives and we do so on the foundation of the principle stated in *Lakshmi Kant Pandey v. Union of India* 15, *Vishaka and others v. State of Rajasthan and others* 16 and *Prakash Singh and others v. Union of India and others* 17.

53. It is worthy to note that certain legislations have come into existence to do away with social menaces like "Sati" and "Dowry". It is because such legislations are in accord with our Constitution. Similarly, protection of human rights is the élan vital of our Constitution that epitomizes humanness and the said conceptual epitome of humanity completely ostracizes any idea or prohibition or edict that creates a hollowness in the inalienable rights of the citizens who enjoy their rights on the foundation of freedom and on the fulcrum of justice that is fair, equitable and proportionate. There cannot be any assault on human dignity as it has the potentiality to choke the majesty of law. Therefore, we would recommend to the legislature to bring law appositely covering the field of honour killing.

54. In this regard, we may usefully refer to the authority wherein this 15 (1984) 2 SCC 244 16 (1997) 6 SCC 241 17 (2006) 8 SCC 1 46 Court has made such recommendation. In Samrendra Beura v. Union of India and others18, this Court held:-

"16. Though such amendments have been made by Parliament under the 1950 Act and the 1957 Act, yet no such amendment has been incorporated in the Air Force Act, 1950. The aforesaid provisions, as we perceive, have been incorporated in both the statutes to avoid hardship to persons convicted by the Court Martial. Similar hardship is suffered by the persons who are sentenced to imprisonment under various provisions of the Act. Keeping in view the aforesaid amendment in the other two enactments and regard being had to the purpose of the amendment and the totality of the circumstances, we think it apt to recommend the Union of India to seriously consider to

WWW.LIVELAW.IN

bring an amendment in the Act so that the hardships faced by the persons convicted by the Court Martial are avoided."

55. Mr. Raju Ramachandran, learned senior counsel being assisted by Mr. Gaurav Agarwal, has filed certain suggestions for issuing guidelines. The Union of India has also given certain suggestions to be taken into account till the legislation is made. To meet the challenges of the agonising effect of honour crime, we think that there has to be preventive, remedial and punitive measures and, accordingly, we state the broad contours and the modalities with liberty to the executive and the police administration of 18 (2013) 14 SCC 672 the concerned States to add further measures to evolve a robust mechanism for the stated purposes.

55.1 Preventive Steps:-

55.1.1. The State Governments should forthwith identify Districts, Sub-Divisions and/or Villages where instances of honour killing or assembly of Khap Panchayats have been reported in the recent past, e.g., in the last five years.

55.1.2. The Secretary, Home Department of the concerned States shall issue directives/advisories to the Superintendent of Police of the concerned Districts for ensuring that the Officer Incharge of the Police Stations of the identified areas are extra cautious if any instance of inter-caste or inter- religious marriage within their jurisdiction comes to their notice.

55.1.3. If information about any proposed gathering of a Khap Panchayat comes to the knowledge of any police officer or any officer of the District Administration, he shall forthwith inform his immediate superior officer and also simultaneously intimate the jurisdictional Deputy Superintendent of Police and Superintendent of Police.

55.1.4. On receiving such information, the Deputy Superintendent of Police (or such senior police officer as identified by the State Governments with respect to the area/district) shall immediately interact with the members of the Khap Panchayat and impress upon

WWW.LIVELAW.IN

them that convening of such meeting/gathering is not permissible in law and to eschew from going ahead with such a meeting. Additionally, he should issue appropriate directions to the Officer Incharge of the jurisdictional Police Station to be vigilant and, if necessary, to deploy adequate police force for prevention of assembly of the proposed gathering.

55.1.5. Despite taking such measures, if the meeting is conducted, the Deputy Superintendent of Police shall personally remain present during the meeting and impress upon the assembly that no decision can be taken to cause any harm to the couple or the family members of the couple, failing which each one participating in the meeting besides the organisers would be personally liable for criminal prosecution. He shall also ensure that video recording of the discussion and participation of the members of the assembly is done on the basis of which the law enforcing machinery can resort to suitable action.

55.1.6. If the Deputy Superintendent of Police, after interaction with the members of the Khap Panchayat, has reason to believe that the gathering cannot be prevented and/or is likely to cause harm to the couple or members of their family, he shall forthwith submit a proposal to the District Magistrate/Sub-Divisional Magistrate of the District/ Competent Authority of the concerned area for issuing orders to take preventive steps under the Cr.P.C., including by invoking prohibitory orders under Section 144 Cr.P.C. and also by causing arrest of the participants in the assembly under Section 151 Cr.P.C.

55.1.7. The Home Department of the Government of India must take initiative and work in coordination with the State Governments for sensitising the law enforcement agencies and by involving all the stakeholders to identify the measures for prevention of such violence and to implement the constitutional goal of social justice and the rule of law.

55.1.8. There should be an institutional machinery with the necessary coordination of all the stakeholders. The different State Governments and the Centre ought to work on sensitization of the law

enforcement agencies to mandate social initiatives and awareness to curb such violence.

55.2. Remedial Measures:-

55.2.1 Despite the preventive measures taken by the State Police, if it comes to the notice of the local police that the Khap Panchayat has taken place and it has passed any diktat to take action against a couple/family of an inter-caste or inter-religious marriage (or any other marriage which does not meet their acceptance), the jurisdictional police official shall cause to immediately lodge an F.I.R. under the appropriate provisions of the Indian Penal Code including Sections 141, 143, 503 read with 506 of IPC.

55.2.2 Upon registration of F.I.R., intimation shall be simultaneously given to the Superintendent of Police/ Deputy Superintendent of Police who, in turn, shall ensure that effective investigation of the crime is done and taken to its logical end with promptitude.

55.2.3 Additionally, immediate steps should be taken to provide security to the couple/family and, if necessary, to remove them to a safe house within the same district or elsewhere keeping in mind their safety and threat perception. The State Government may consider of establishing a safe house at each District Headquarter for that purpose. Such safe houses can cater to accommodate (i) young bachelor-bachelorette couples whose relationship is being opposed by their families /local community/Khaps and (ii) young married couples (of an inter-caste or inter-religious or any other marriage being opposed by their families/local community/Khaps). Such safe houses may be placed under the supervision of the jurisdictional District Magistrate and Superintendent of Police.

55.2.4 The District Magistrate/Superintendent of Police must deal with the complaint regarding threat administered to such couple/family with utmost sensitivity. It should be first ascertained whether the bachelor-bachelorette are capable adults. Thereafter, if necessary, they may be provided logistical support

WWW.LIVELAW.IN

for solemnising their marriage and/or for being duly registered under police protection, if they so desire. After the marriage, if the couple so desire, they can be provided accommodation on payment of nominal charges in the safe house initially for a period of one month to be extended on monthly basis but not exceeding one year in aggregate, depending on their threat assessment on case to case basis.

55.2.5 The initial inquiry regarding the complaint received from the couple (bachelor-bachelorette or a young married couple) or upon receiving information from an independent source that the relationship/marriage of such couple is opposed by their family members/local community/Khaps shall be entrusted by the District Magistrate/ Superintendent of Police to an officer of the rank of Additional Superintendent of Police. He shall conduct a preliminary inquiry and ascertain the authenticity, nature and gravity of threat perception. On being satisfied as to the authenticity of such threats, he shall immediately submit a report to the Superintendent of Police in not later than one week.

55.2.6 The District Superintendent of Police, upon receipt of such report, shall direct the Deputy Superintendent of Police incharge of the concerned sub-division to cause to register an F.I.R. against the persons threatening the couple(s) and, if necessary, invoke Section 151 of Cr.P.C. Additionally, the Deputy Superintendent of Police shall personally supervise the progress of investigation and ensure that the same is completed and taken to its logical end with promptitude. In the course of investigation, the concerned persons shall be booked without any exception including the members who have participated in the assembly. If the involvement of the members of Khap Panchayat comes to the fore, they shall also be charged for the offence of conspiracy or abetment, as the case may be.

55.3. III. Punitive Measures:-

55.3.1. Any failure by either the police or district officer/officials to comply with the aforesaid directions shall be considered as an act of deliberate negligence and/or misconduct for which departmental action

must be taken under the service rules. The departmental action shall be initiated and taken to its logical end, preferably not exceeding six months, by the authority of the first instance.

55.3.2 In terms of the ruling of this Court in Arumugam Servai (supra), the States are directed to take disciplinary action against the concerned officials if it is found that (i) such official(s) did not prevent the incident, despite having prior knowledge of it, or (ii) where the incident had already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

55.3.3. The State Governments shall create Special Cells in every District comprising of the Superintendent of Police, the District Social Welfare Officer and District Adi-Dravidar Welfare Officer to receive petitions/complaints of harassment of and threat to couples of inter-caste marriage.

55.3.4. These Special Cells shall create a 24 hour helpline to receive and register such complaints and to provide necessary assistance/advice and protection to the couple.

55.3.5. The criminal cases pertaining to honour killing or violence to the couple(s) shall be tried before the designated Court/Fast Track Court earmarked for that purpose. The trial must proceed on day to day basis to be concluded preferably within six months from the date of taking cognizance of the offence. We may hasten to add that this direction shall apply even to pending cases. The concerned District Judge shall assign those cases, as far as possible, to one jurisdictional court so as to ensure expeditious disposal thereof.”

5. Taking into consideration the directions and the observations in the case of Lata and Shakti (both supra); the investigating officer cannot be restrained from filing the chargesheet.

6. In the result, both the applications are rejected. The Investigating Officer is directed to file the chargesheet within statutory period in connection with FIR bearing C.R.No. I - 63 of 2019 and C.R. No. I - 64 of 2019 registered with Malpur Police Station.

Direct service in addition to normal mode of service is permitted.

A.M.A. SAIYED

(GITA GOPI,J)

सत्यमेव जयते

**THE HIGH COURT
OF GUJARAT**

WEB COPY