

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP No.764 of 2021 (O&M)
DATE OF DECISION: 27.01.2021

Nahida&Anr.

.....Petitioners

versus

State of Haryana &Ors.

.....Respondents

CORAM:- HON'BLE MRS. JUSTICE ALKA SARIN

Present: Mr. Saleem Ahmed, Advocate for the petitioners

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ALKA SARIN, J. (Oral):

Heard through video conferencing.

This is a Criminal Writ Petition under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of mandamus directing respondent Nos.2 and 3 to grant protection to the life and liberty of the petitioners at the hands of private respondent Nos.4 to 8 and not to harass or interfere in the married life of the petitioners at the instance of the private respondents.

The facts, as set out in the petition, are that both the petitioners are Muslims and are major. The date of birth of petitioner No.1 is 01.01.2002 as per her Aadhar Card (Annexure P-2) and that of petitioner No.2 is 01.01.1997 as per his Aadhar Card (Annexure P-3). It is further alleged that both the petitioners are in love with each other since many years

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and have performed Nikah on 19.01.2021 as per Nikahnama Annexure P-1. However, the relatives of petitioner No.1 are against the relationship of the petitioners. In para 15 of the petition it is stated *“That it is also pertinent to mention before this Hon’ble Court that it is the second marriage of both petitioner earlier forcefully get married and petitioner 1 filed case against her earlier in-laws”*.

Learned counsel for the petitioners would contend that the petitioners are apprehending danger to their life and liberty. On a query put to learned counsel for the petitioners as to the marital status of the petitioners, it has been stated that being Muslim, the petitioners can both contract a second marriage.

Petitioner No.1 is a Muslim lady and who admittedly was married earlier. No details are forthcoming about when she was married earlier and to whom. Further, there is no averment as to whether she divorced her first husband either under the Muslim Personal Law or under the provisions of the Muslim Marriages Act, 1939. There is also no averment that her first marriage stands dissolved and thus her first marriage subsists in the eyes of law. The learned counsel has also not been able to show as to how this Court can provide protection to the petitioners as a couple when petitioner No.1 has not legally divorced her earlier spouse. The petitioner Nos.1 and 2 have got married without petitioner No.1 obtaining a legally valid divorce from her first husband. A Muslim man may get married more than once without divorcing his earlier wife but the same does not apply to a Muslim lady. A Muslim lady has to divorce her first husband, either under the Muslim Personal Law or under the provisions of the Muslim Marriages Act, 1939, before contracting a second marriage. In fact, the

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alleged marriage itself between petitioner No.1 and petitioner No.2 would be illegal inasmuch as this marriage has been contracted without the petitioner No.1 being legally divorced.

Article 21 of the Constitution of India provides that no person shall be deprived of his life and liberty except in accordance with law. The petitioners have approached this Court for protection of their life and liberty to live as a couple which cannot be considered in the facts and circumstances of the present case. However, as an individual either of the petitioners, if they apprehend any threat to their life or liberty, would be entitled to approach the Police for redressal of their apprehensions regarding threats to their life and liberty.

In view thereof, the present petition is held to be not maintainable at the behest of the petitioners who have got married without petitioner No.1 being legally and validly divorced. As stated above, the petitioners, as individuals, would always be at liberty to approach the concerned Senior Superintendent of Police for redressal of their apprehensions regarding threats to their life and liberty. Needless to mention, in the event of such a representation being made by either of the petitioners' in their individual capacity, the concerned officer(s) shall consider the same in accordance with law.

Disposed off accordingly.

**(ALKA SARIN)
JUDGE**

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<p>NOTE: Whether speaking/non-speaking: Speaking Whether reportable: YES/NO</p>
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