

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No.1634/2018 & IA No.1/2018

Date of order:30.08.2018

Rashma Bano & anr. Vs. State & others

Coram:

Hon'ble Mr. Justice Sanjay Kumar Gupta, Judge

Appearing counsel:

For petitioner(s) : Mr. Gagan Kohli, Advocate.

For respondent(s) : Mr. Raman Sharma, Dy. AG.

i/	Whether to be reported in Press/Media	:	Yes/No
ii/	Whether to be reported in Digest/Journal	:	Yes/No

1. Petitioners, in person, present in the Court and have been identified by their counsel.
2. The petitioners claim to be major, as such, claim to have contracted marriage according to their own will and choice.
3. Through the instant writ petition, the petitioners seek issuance of directions to the official respondent Nos.1 to 3 to provide adequate security to them, on account of their allegedly facing threat to their life and liberty at the hands of respondent No. 4.
4. It is stated in the petition that both the petitioners are major and were having love affair for each other and they disclosed the fact of their love affair to their respective parents and requested them for the solemnization of their marriage to which the parents of petitioner No.2 agreed but the parents and other relations of petitioner No.1 are against the marriage as they wanted the

petitioner No.1 to solemnize marriage with respondent No.4. They also threatened petitioner No.2 that if in future he tried to see their daughter they will eliminate him. Constrained by the said situation, both the petitioners being capable of understanding their well being performed Nikah on 28.06.2017 in accordance with Muslim Law and marriage agreement was also executed by the petitioners on 08.08.2018.

5. The date of birth of petitioner No.1-Rashma Bano is recorded in the Unique Identification Acknowledgement/Consent for enrolment (page 20) issued by the Government of India, as 01.01.1999. In other words, petitioner No.1 is 19 years & 8 months of age; while as per copy of Aadhar Card (page 21) issued by the Government of India, date of birth of petitioner No.2-Mohd. Benya is recorded therein as 15.02.1993. In other words, petitioner No.2 is more than 25 years of age.
6. Learned counsel contends that the petitioners fulfil the age requirement as also other requirements under law to entitle them to get married. Learned counsel further contends that the petitioners in view of their mutual liking for each other, got married each other and executed Marriage Agreement before the Public Notary on 08.08.2018 (page 15-18). They also solemnized marriage in accordance with Muslim Religious Rites and Ceremonies and executed Nikah Nama on 28.06.2017 (Annexure-A).

7. Learned counsel contends that the petitioners apprehend threat to their life and liberty at the hands of respondent No.4, therefore, in the circumstances, they have invoked the jurisdiction of this Court for issuance of directions to the official respondents to provide them security in accordance with law. Learned counsel states that the petitioners would be satisfied if the writ petition is disposed of by issuing direction to respondent Nos. 1 to 3 to provide protection to the petitioners.
8. Notice. Mr. Raman Sharma, Dy. AG, waives notice on behalf of official respondents and raises no objection to the Court in disposing of the case in the afore said terms.
9. In similar circumstances, the Apex Court in **Lata Singh vs. State of UP and anr.**, AIR 2006 SC 2522, has observed as under:-

“This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law. Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.....”

The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them

must be severely punished. This is a free and democratic country, and once a person becomes a 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 nor subjected to threats or acts of violence, and anyone 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.”

10. In **Shafin Jahan Vs. Asokan K. M. & Ors.** reported in **AIR 2018 SC 1933**, it has also been held that:-

“20. Article 16 of the Universal Declaration of Human Rights underscores the fundamental importance of marriage as an incident of human liberty:

“Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

21. The right to marry a person of one’s choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of

happiness. Matters of belief and faith, including whether to believe are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners.

22. In Justice K S Puttaswamy v Union of India, 2017 (10) SCC 1, this Court in a decision of nine judges held that the ability to make decisions on matters close to one's life is an inviolable aspect of the human personality:

“The autonomy of the individual is the ability to make decisions on vital matters of concern to life... The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination... The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual.”

A Constitution Bench of this Court, in Common Cause (A Regd. Society) v Union of India, Writ Petition (Civil) No.215 of 2005, held:

“Our autonomy as persons is founded on the ability to decide: on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe or not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives.”

The strength of the Constitution, therefore, lies in the guarantee which it affords that each individual will have a protected entitlement in determining a choice of partner to share intimacies within or outside marriage.”

11. In view of the above, this petition is, accordingly, disposed of at this stage, with a direction that official respondents 1 to 3, shall ensure the protection of life and liberty of the petitioners and shall take appropriate steps strictly in accordance with the ratio of the judgment supra.
12. With the aforementioned directions, the writ petition is **disposed of** along with connected IA.

(Sanjay Kumar Gupta)
Judge

Jammu:
30.08.2018
Narinder