HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Writ Petition No. 535/2022

1. Urmila Devi D/o Bhanwarlal W/o Ramesh Chand Yadav, Aged About 25 Years, R/o 189, Ward No. 5, Govindi, Nawan, Nagaur, Presently R/o Anantpura, Kishangarh Renwal, Jaipur.
2. Ramesh Chand Yadav S/o Shri Omprakash Yadav, Aged About 26 Years, Resident Of Anantpura, Kishangarh Renwal, Jaipur.

----Petitioners

Versus

1. State Of Rajasthan, Through Secretary, Department Of Home Affairs, And Justice, Secretariat Rajasthan, Jaipur.
2. Superintendent Of Police, Jaipur Rural.
3. Superintendent Of Police, Nagaur.
4. Station House Officer Police Station Renwal, District Jaipur.
5. Station House Officer Police Station Nawan, District Nagaur.
6. Bhanwar Lal S/o Suaram, R/o 189, Ward No. 5, Govindi, Nawan, Nagaur.

----Respondents

For Petitioner(s) : Mr. Gajveer Singh Rajwat
For Respondent(s) : Mr. Laxman Meena, PP

HON'BLE MR. JUSTICE BIRENDRA KUMAR

Order

31/08/2022

1. Heard the parties.

2. This criminal misc. petition has been filed under Section 482 Cr.P.C. for protection to life and personal liberty of the petitioners.

3. The petitioners are major and have claimed to be married with each other. Their marriage has been registered. The petitioners have approached this court for protection of their life and liberty as private respondents are not approving and recognizing their marriage.

4. The law is well settled that privacy and liberty of individuals cannot be infringed by taking the law in one's hands. If there is allegation of violation of law, the aggrieved person may take legal recourse and no other step can be at the whim of anyone.

5. *In Navtej Singh Johar Vs. Union of India (2018) 10 SCC 1, The Supreme Court said as follows:-*

> *"The right to privacy enables an individual to exercise his or her autonomy, away from the glare of societal expectations. The realisation of the human personality is dependent on the autonomy of an individual. In a liberal democracy, recognition of the individual as an autonomous person is an acknowledgment of the State's respect for the capacity of the individual to make independent choices. The right to privacy may be construed to signify that not only are certain acts no longer immoral, but that there also exists an affirmative moral right to do them."*

6. In Shafin Jahan Vs. Asokan K.M. 2018 (16) SCC 368, The Hon'ble Supreme Court said that " the social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible."

7. In Navtej Singh Johar (supra) The Hon'ble Supreme Court further said :-

"131. The duty of the constitutional courts is to adjudge the validity of law on well-established principles, namely, legislative competence or violations of fundamental rights or of any other constitutional provisions. At the same time, it is expected from the courts as the final arbiter of the Constitution to uphold the cherished principles of the Constitution and not to be remotely guided by majoritarian view or popular perception. The Court has to be guided by the conception of constitutional morality and not by the societal morality."

In a constitutional democracy like ours where the rule of law prevails, must not be allowed to be trampled by obscure notions of social morality which have no legal tenability. The concept of constitutional morality would serve as an aid for the Court to arrive at a just decision which would be in consonance with the constitutional rights of the citizens, howsoever small that fragment of the populace may be. The idea of number, in this context, is meaningless; like zero on the left side of any number.

133. In this regard, we have to telescopically analyse social morality vis-a-vis constitutional morality. It needs no special emphasis to state that whenever the constitutional courts come across a situation of transgression or dereliction in the sphere of fundamental rights, which are also the basic human rights of a section, howsoever small part of the society, then it is for the constitutional courts to ensure, with the aid of judicial engagement and creativity, that constitutional morality prevails over social morality."

8. Considering the constitutional right of the petitioners, let the State respondents ensure protection of the personal life and liberty of the petitioners.

9. With the aforesaid observations, petition stands disposed of.

10. Stay application also stands disposed of.

(BIRENDRA KUMAR),J

Sunita/16