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WP-27565-2024

IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL DHAGAT

ON THE 22<sup>nd</sup> OF OCTOBER, 2024WRIT PETITION No. 27565 of 2024*ANKITA RATHORE AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Shri Amanulla Usmani - Advocate for the petitioners.*

*Shri S.K. Shrivastava - Government Advocate for the State.*

*Shri G.P. Singh - Advocate for respondent No.8.*

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ORDER

Petitioners have filed this petition under Article 226 of the Constitution of India making following prayer:-

*(i) Issue a writ in the nature of Mandamus ensuring the safety, security and protection for the life, limb and property of the petitioners, petitioner no.2 relations, friends and neighbors.*

*(ii) Issue a writ in the nature of Mandamus restraining the police authorities from arresting the petitioners and petitioner no.2 relations, friends and neighbors.*

*(iii) Issue a writ in the nature mandamus restraining the police authorities and Respondent No.8 from taking any coercive action against the petitioners*



*and Petitioner No.2 relations, friends and neighbors.*

*(iv) Mandamus thereby directing the Respondent No.1 to 7 to give protection to the petitioners when they file the application under the provisions of the Special Marriage Act for performance of marriage before Respondent No.4.*

*(v) Issue any other appropriate writ/writs, order/orders or direction/directions, which this Hon'ble Court deems fit and proper may also be passed in the interest of justice and looking to the facts and circumstances of the case.*

2. Statements of petitioners No.1 and 2 were recorded in Court. They had stated that they are major, economically independent and want to marry each other. Because of different religion, they can perform their marriage under the Special Marriage Act, 1954. It is stated that they are facing severe opposition from family members. They are not permitting them to go to the Office of Registrar of Marriage. It is stated that there is threat to their life, therefore, they may be granted protection.

3 . Learned counsel for petitioners under fear of repercussion has withdrawn his *vakalatnama* and do not want to appear in writ petition. Application filed by petitioner for withdrawal of his *vakalatnama* was allowed. Petitioners were called in person to appear before the Court.

4. Learned Government Advocate appearing for the State submitted that if there is real danger to life and limb of petitioners then they will be



provided security by State.

5. Learned counsel appearing for respondent No.8 opposed the prayer of petitioners. He has relied on *order dated 27.05.2024* passed in *WP No.9589/2024*. It is submitted by him that Co-ordinate Bench of this Court has dismissed the similar petition and has refused to grant security to persons who were similarly circumstanced. He has placed reliance on *paragraphs No.14 and 15* of aforesaid order, which are quoted as under:-

*"14. As per Mahomedan law, the marriage of a Muslim boy with a girl who is an idolatress or a fire-worshipper, is not a valid marriage. Even if the marriage is registered under the Special Marriage Act, the marriage would be no more a valid marriage and it would be an irregular (fasid) marriage.*

*15. It is not the case of petitioners that in case if marriage is not performed, then they are still interested to live in live-in relationship. It is also not the case of petitioners that petitioner No.1 would accept Muslim religion."*

Petition making identical prayer was considered by Co-ordinate Bench and was dismissed, therefore, said order is binding upon this Court and this writ petition may be dismissed.

6. Heard the counsel for the parties.

7. Special Marriage Act, 1954 was enacted with following objected reasons:-

*"This Bill revises and seeks to replace the Special Marriage Act of 1872 so as to provide a special form of marriage which can be taken advantage of by any person in India and by all Indian nationals in foreign*



*countries irrespective of the faith which either party to the marriage may profess. The parties may observe any ceremonies for the solemnization of their marriage but certain formalities are prescribed before the marriage can be registered by the Marriage Officers. For the benefit of Indian citizens abroad, the Bill provides for the appointment of Diplomatic and Consular Officers as Marriage Officers for solemnizing and registering marriage between citizens of India in a foreign country."*

8. Section 4 of the Special marriage Act, 1954 is quoted as under:-

*"4. Conditions relating to solemnization of special marriages- Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:-*

*(a) neither party has a spouse living;*

*[(b) neither party-*

*(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or*

*(ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or*

*(iii) has been subject to recurrent attacks of insanity]*



*(c) the male has completed the age of twenty-one years and the female the age of eighteen years;*

*[(d) the parties are not within the degrees of prohibited relationship:*

*Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and]*

*(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.]*

*[Explanation.-- In this section, "custom", in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:*

*Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied-*

*(i) that such rule has been continuously and*



*uniformly observed for a long time among those members;*

*(ii) that such rule is certain and not unreasonable or opposed to public policy; and*

*(iii) that such rule, if applicable only to a family, has not been discontinued by the family.]*

9. Apex Court in paragraph No.4 of case of *Molly Joseph @ Nish Vs. George Sebastian @ Joy* reported in *(1996) 6 SCC 337* has held as under:-

*"4..... It is well settled that when legislature enacts a law even in respect of the personal law of a group of persons following a particular religion, then such statutory provisions shall prevail and override any personal law, usage or custom prevailing before coming into force of such Act."*

10. On going through the aforesaid provision of law, it is clear that Special Marriage Act, 1954 will override other enactments and personal law. Marriage between two persons of different religion which do not fall under prohibitive categories mentioned in Section 4 of the Special Marriage Act, 1954, can be solemnized under this Act despite personal laws of the persons. Said fact was not considered by Co-ordinate Bench and there was no issue before Co-ordinate Bench whether a Mahomedan boy and a Hindu girl can perform marriage under Special Marriage Act. In these circumstances, order passed by Co-ordinate Bench is not binding on this Court.

11. On going through the facts and circumstances of the case and also taking into consideration the statements of petitioners No.1 and 2, it is found that they are under threat of physical violation from their family members and relatives. View of society is also against them. Various religious group



may also oppose the marriage of petitioners. However, the Special Marriage Act, 1954 allows persons of different religion to marry each other if they are not under the prohibitive categories as defined in the Act of 1954. Threat to petitioners is concrete and visible before this Court.

12. Interim order passed by this Court is protected by final order and is continued. Police protection is granted to petitioners till 12.11.2024. Superintendent of Police, Jabalpur is directed to produce petitioners No.1 and 2 under his protection before the Registrar of Marriage. Registrar of Marriage is free to satisfy himself that petitioners No.1 and 2 fulfill all the conditions mentioned under Special Marriage Act, 1954 for performance of marriage. Police protection will continue for petitioners No.1 and 2 for further period of 30 days after 12.11.2024. Thereafter, police may withdraw their protection if there is no threat to them. If petitioners feel any threat after said period of 30 days then they may approach the Superintendent of Police for help and protection.

13. Superintendent of Police, Bhopal is directed to give protection to petitioners No.1 and 2, if same is required considering the circumstances existing at that time.

14. With aforesaid directions, petition is *disposed off*.

(VISHAL DHAGAT)  
JUDGE