

MANU/UP/0110/2021

IN THE HIGH COURT OF ALLAHABAD

Writ C. No. 1213 of 2021

Decided On: 20.01.2021

Poonam Rani and Ors. **Vs.** State of U.P. and Ors.

Hon'ble Judges/Coram:

M.C. Tripathi and Sanjay Kumar Pachori, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Dhiraj Kumar Pandey

For Respondents/Defendant: C.S.C.

ORDER

1. Heard Shri Dheeraj Kumar Pandey, learned counsel for the petitioners and Shri Devesh Vikram, learned Standing Counsel for the State respondents.

2. In view of the order proposed to be passed, notices need not go to respondent nos. 4 to 6.

3. Present writ petition has been preferred for a direction to respondent nos. 2 and 3 not to adopt any coercive process against the petitioners and for a further direction to respondent nos. 4 to 6 not to interfere in peaceful living of the petitioners.

4. The petition highlights the stark reality of the society where the citizens are facing discrimination at the hands of the society only on account of their sexual orientation despite it being well settled that sexual orientation is innate to human being. It is averred that the first petitioner is major girl having date of birth 10.1.1998 and the second petitioner is also major having date of birth 5.1.1999. Regarding their age details are appended as Annexure No. 1 to the writ petition. Both of them earning handsome amount. Regarding their financial status the details are also given in para 5 of the writ petition. Both the petitioners are living in live-in-relationship since a couple of years and are voluntarily living with each other on account of their sexual orientation. They are also facing hard resistance at the hand of their family members.

5. Learned counsel for the petitioners has vehemently contended that despite legitimacy being accorded to such relations by the Supreme Court in the case of Navtej Singh Johar & Ors. v. Union of India, MANU/SC/0947/2018 : (2018) 10 SCC 1 the petitioners are being threatened with violation of their rights enshrined under Article 21 of the Constitution of India only on the ground of their sexual orientation. In support of his submissions, he has also placed reliance on the judgment dated 2.11.2020 passed in Writ-C No. 17394 of 2020 (Sultana Mirza & Anr. v. State of U.P. & Ors.). He submits that civil protection may be accorded by this Court otherwise the petitioners would suffer irreparable loss and injury.

6. So far as the relief as has been asked, the same has not been disputed by learned Standing Counsel.

7. The Court has proceeded to examine the record in question as well as respectfully

considered the judgments cited at Bar. For ready reference, the relevant portion of the judgment of Navtej Singh Johar (Supra) is quoted as under:-

"561.1. Sexual orientation is an intrinsic element of liberty, dignity, privacy, individual autonomy and equality;

561.2. Intimacy between consenting adults of the same-sex is beyond the legitimate interests of the state;

561.3. Sodomy laws violate equality by targeting a segment of the population for their sexual orientation;

561.4. Such a law perpetrates stereotypes, lends authority of the state to societal stereotypes and has a chilling effect on the exercise of freedom;

561.5. The right to love and to a partner, to find fulfillment in a same-sex relationship is essential to a society which believes in freedom under a constitutional order based on rights;

561.6. Sexual orientation implicates negative and positive obligations on the state. It not only requires the state not to discriminate, but also calls for the state to recognise rights which bring true fulfillment to same-sex relationships.....

.....We hold and declare that:

(i) Section 377 of the Penal Code, in so far as it criminalises consensual sexual conduct between adults of the same sex, is unconstitutional;

(ii) Members of the LGBT community are entitled, as all other citizens, to the full range of constitutional rights including the liberties protected by the Constitution;

(iii) The choice of whom to partner, the ability to find fulfillment in sexual intimacies and the right not to be subjected to discriminatory behaviour are intrinsic to the constitutional protection of sexual orientation;

(iv) Members of the LGBT community are entitled to the benefit of an equal citizenship, without discrimination, and to the equal protection of law; and PARTM....."

8. In the aforesaid facts and circumstances, this Court being a constitutional Court is duty bound to monitor and observe the Constitutional morality as well as the rights of the citizens which are under threat only on account of the sexual orientation, as such considering the facts and circumstances of the case, we direct the Senior Superintendent of Police, Saharanpur to extend suitable protection to the petitioners in the event they approach the Senior Superintendent of Police, Saharanpur for the necessary protection and ensure that no harassment is caused to them.

9. The writ petition stands disposed off accordingly

10. The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the petitioners alongwith a self

attested identity proof of the said person (preferably Aadhar Card) mentioning the mobile number to which the said Aadhar Card is linked.

11. The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

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