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WA-2618-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 18th OF DECEMBER, 2024

WRIT APPEAL No. 2618 of 2024

*Versus*

Appearance:

Shri Ashok Lalwani, Senior Advocate with Shri Abhishek Singh, Advocate for appellant.

Shri Anubhav Jain, Government Advocate for respondents/State.

Shri Jwalant Singh Chauhan, Advocate for respondent Nos. 1 and 2.

ORDER

Per. Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice

The present appeal is filed being aggrieved by the order dated 22.10.2024 passed in WP No.27565/2024.

2. The respondent Nos. 1 and 2 have applied for marriage before the Registrar, Marriage under Section 4 of the Special Marriage Act, 1954. They were apprehending threat to their personal life and hence preferred Writ Petition No.27565/2024 for protection from the present appellant and his family/community members.

3. It is stated in the present appeal that though there was no imminent danger expressed in the petition, an interim order dated 04.10.2024



was passed without notice to the appellant. The petition was ordered to be heard in the week commencing 04.11.2024 and notices were also issued to all the respondents for hearing on a date in week commencing 04.11.2024. For the reasons unknown to the appellant the petition came up for hearing on 22.10.2024 on which date the appellant had only filed his Vakalatnama. However, on the same day, the counsel for petitioner withdrew his Vakalatnama by pleading that he had threat from police and requested the court that petitioner be informed to engage another counsel, but, surprisingly, the petitioners/respondents no 1 & 2 appeared at the hearing of the case on 22.10.2024, which was not the date fixed for hearing.

4. Counsel appearing on behalf of the appellant submits that neither the petitioners/respondents no 1 & 2 were given the time to engage another counsel nor the appellant was given time to file his response in writing, though the petitioners/respondent No.1 and 2 had interim order in their favour. However, the learned Single Judge merely on the basis of statement recorded in his chamber and the averments made in the petition has decided the petition by taking recourse to Section 4 of the Special Marriage Act 1954 and picking up few lines of para 4 of the judgment reported as (1996) 6 SCC 337. It is further submitted that it shall not be out of place to mention that another learned Single Judge in WP No.9589/2024 considering the Mohammedan Law (Personal Law) has held that marriage between, a Mohammedan Boy and a Hindu Girl falls within the prohibited category mentioned in Section 4 of the Special Marriage Act, 1954 (hereinafter referred to as " the Act of 1954) for performance of marriage. However,



another learned Single Judge while passing the order impugned in this appeal has ignored to appreciate the repercussion of the Act of 1954.

5. The present appeal has been filed on the ground that the learned Single Judge has not given detailed consideration to the conditions prescribed under Section 4 of the Act of 1954. In para 10 & 11 of the order having wrongly held that marriage be solemnized under Special Marriage Act 1954 despite the personal laws of the persons. The learned Single Judge has fallen in error in holding vide para 10 of the judgment that marriage between two persons of different religions which do not fall under prohibitive categories mentioned in Section 4 of the Act of 1954 and marriage can be solemnized under this Act despite personal laws of the persons. He has further fallen in error in holding that the fact was not considered by Coordinate Bench (First learned Single Judge impugned herein) and there was no issue before Coordinate Bench whether a Mahomedan boy and a Hindu girl can perform marriage under Special Marriage Act, 1954 and in these circumstances, order passed by the Coordinate Bench (Second learned Single Judge) is not binding on this Court, though the Coordinate Bench in W.P No.9589/2024 has very much held and considered Section 4 of Special Marriage Act 1954 in the light of the Muslim Personal law. Thus, the learned Single Judge has fallen in error in holding that the judgment passed in WP No.9589/2024 is not binding on him.

6. It is argued by learned counsel for appellant that the learned Single Judge has erred in not appreciating the locus of the appellant to object



to the marriage of respondent Nos. 1 and 2 and effect of Section 19 of the Act of 1954 whereby the ties of the Hindu Girl get severed from her parents. It is further argued that the impugned judgment being contrary to the earlier Judgment passed in W.P No 9589/2024 is bad in law and deserves to be set aside as per the law laid down in 2003(1) MPLJ 513 and 1990 AIR SC 307.

7. It is pertinent to mention here that in Writ Petition No.9589/2024 filed by petitioners therein, they had sought the following reliefs which read as under :-

"i. Issue a writ in the nature of mandamus directing the Respondent authority to provide the security to the petitioners from the family members of the petitioner no.1.

ii, Issue a writ in the nature of mandamus directing the Respondent authority to provide the follow-up guard to the petitioners for appearing before the Marriage Registration Officer i.e. Additional Collector Anuppur in Special Marriage Act Case fixed on 25.04.2024.

iii, Issue a writ in the nature of mandamus directing the Respondent authority to not registered any case against the petitionerNo.2 in respect of kidnapping of petitionerNo.1 or other related offences in the complaint made by the family members of the petitioner No.1.

iv. Any other relief which this Hon'ble Court deem fit may also is granted."

8. The learned (first) Single Judge has observed and held that as per Mohammedan 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. Accordingly,



the writ petition was dismissed vide order dated 27.05.2024. Thereafter another petition being WP No.27565/2024 was filed, which was disposed of vide order dated 22.10.2024 impugned herein wherein the following reliefs were sought for which read as under:

"(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."

9. The learned Single Judge in the said petition has discussed the provisions of the Special Marriage Act, 1954. While referring the judgment rendered in the case of *Molly Joseph @ Nish Vs. George Sebastian @ Joy* reported in *(1996) 6 SCC 337* it has been held that provisions of the Special Marriage Act, 1954 will override other enactments and personal law. Marriage between two persons of different religions which do not fall under



prohibitive categories mentioned in Section 4 of the Special Marriage Act, 1954, can be solemnized under that Act despite personal laws of the persons. It is further observed that the said fact was not considered by the Co-ordinate Bench (first learned Single Judge) and there was no issue before the said Bench whether a Mohammedan boy and a Hindu girl can perform marriage under the Special Marriage Act. In those circumstances, WP No.27565/2022 was considered and it was held that in view of the above, the order passed by the coordinate Bench is not binding on him.

10. In the case of *Mohammed Salim (D) Through LRs. & Ors. Vs. Shamsudeen (D) Through LRs. & Ors.* decided on 22.01.2019 in Civil Appeal No.5158/2013 it has been held that article 259 (i) at page 345 of the 21st edition by Mulla deals with difference of religion, providing that marriage of a Muslim man with a non-Muslim woman who is an idolatress or fire whorshipper is not void, but merely irregular as muslim personal law, whereas Section 4 of the Hindu Marriage Act describes that if the marriage is within the prohibitive relations then marriage cannot be performed under the Act of 1954.

11. In the present case, there is a prohibition in the personal law that under the Mohammedan Law a mohamendan boy cannot perform marriage with a Hindu girl. However, there is no bar, if the marriage is taken place under Section 4 of the Act of 1954.

12. It is pertinent to mention here that we interacted with petitioners/respondent Nos. 1 and 2 who are present on the direction of this Court and submit that from the last 5 years they are friends and are in live-in-



relation and they wish to perform marriage. Therefore, they made an application for marriage before the Marriage Officer and thereafter they could not visit the office for the reasons that the order passed by this court was thereafter stayed. Since we have declared that there is no prohibition under Section 4 of the Act of 1954 to marry in between the respondent Nos. 1 and 2, therefore, we dispose of this appeal directing the respondents/State authorities to facilitate them to appear before the Marriage Officer.

13. Needless to state here that if any hindrance is created by anyone, the concerned authorities will take action against the said persons as per law.

14. Since the respondent Nos. 1 and 2 have availed the police protection from 22.10.2024, the said protection shall continue atleast for one month after the marriage and thereafter the concerned Superintendent of Police shall assess the situation and if required as per threat perception, the protection shall continue till threat perception continues.

15. In view of the above, the appeal is disposed of.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

SKM