AFR
Court No. - 43

Case :-	Crl. Mis. Writ Petition No- 11367 of 2020
Petitioner :-	Salamat Ansari & 3 Others
Respondent :-	State of U.P. & 3 Others
Counsel for Petitioner :-	Rakesh Kumar Mishra
Counsel for Respondent :-	G.A.,Ritesh Kumar Singh

Hon'ble Pankaj Naqvi,J.
Hon'ble Vivek Agarwal,J.

(Per Pankaj Naqvi, J)

Heard Sri Rakesh Kumar Mishra, learned counsel for the petitioners, Sri Ritesh Kumar Singh, learned counsel for the informant and Sri Deepak Mishra, the learned A.G.A.

Learned AGA and the learned counsel for the informant do not propose to file any counter affidavit. With the consent of all, the petition is being heard and finally decided under the rules of the Court.

This writ petition has been filed, seeking a writ of mandamus, directing the respondent concerned, not to arrest the petitioners, with a further prayer for quashing the impugned F.I.R. dated 25.08.2019 registered as Case Crime No. 0199 of 2019, under Sections 363, 366, 352, 506 I.P.C. and Section 7/8 POCSO Act, Police Station- Vishnupura, District Kushi Nagar.

1. Salamat Ansari and Priyanka Kharwar @ Alia along with two others have invoked the extraordinary jurisdiction of this Court for seeking quashment of an FIR dated 28.08.2019 as Case Crime No. 0199 of 2019 under Sections 363, 366, 352, 506 IPC and Section 7/8 POCSO Act, Police Station Vishnupura, Kushinagar on the premise that the couple is of the age of majority, competent to

contract a marriage, performed Nikah on 19.08.2019 as per muslim rites and rituals, after Priyanka Kharwar renounced her Hindu identity and embraced Islam. It is further submitted that the couple has been living together as husband and wife since last one year peacefully and happily. It is finally submitted that the FIR lodged by father of petitioner no. 4/Priyanka Kharwar @ Alia is prompted by malice and mischief only with a view to bring an end to martial ties, no offences are made out, FIR be quashed.

2. Learned AGA and learned counsel for the informant vehemently opposed the submissions on the premise that conversion per se for contracting a marriage is prohibited, said marriage has no sanctity in law, thus this Court should not exercise its extra-ordinary jurisdiction in favour of such a couple. They relied on a judgment of a Learned Single Judge in Writ C No. 57068 of 2014 *(Smt Noor Jahan Begum @ Anjali Mishra and Another vs. State of U.P. and others)* decided on 16.12.2014 and its recent reiteration in Writ C No. 14288 of 2020 (Priyanshi @ Km. Shamren and others Vs. State of U.P. and Another) decided on 23.09.2020.

3. There is no dispute that the couple has attained the age of majority as Priyanka Kharwar @ Alia's date of birth as per High School Certificate (annexure 3) is 07.07.1999 which is an enlisted document in Juvenile Justice Act, 2015 for determining the age of an individual coupled with the fact that the entry of the date of birth is not under challenge. The mere fact that this petition is filed and supported by an affidavit of Priyanka Kharwar @ Alia alleged victim, goes to show that she is voluntarily living with Salamat Ansari as a married couple.

4. Once age of Priyanka Kharwar @ Alia is not in dispute as she is reported to be around 21 years, petitioner nos. 1 to 3 cannot be made accused for committing an offence under Section 363 IPC

or 366 IPC as victim on her own left her home in order to live with Salamat Ansari. Similarly once Priyanka Kharwar @ Alia is found not to be a juvenile, the offence under Seciton 7/8 POCSO Act is also not made out. Allegations relating to offence under Section 352, 506 IPC qua petitioner no. 2 and 3 prima facie, in view of above background, appear to be exaggerated and malafidely motivated with a view to implicate the family of petitioner no. 1 as petitioner no. 2 and 3 are mother and brother of petitioner no. 1 respectively.

5. We do not see Priyanka Kharwar and Salamat as Hindu and Muslim, rather as two grown up individuals who out of their own free will and choice are living together peacefully and happily over a year. The Courts and the Constitutional Courts in particular are enjoined to uphold the life and liberty of an individual guaranteed under Article 21 of the Constitution of India. Right to live with a person of his/her choice irrespective of religion professed by them, is intrinsic to right to life and personal liberty. Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals. We fail to understand that if the law permits two persons even of the same sex to live together peacefully then neither any individual nor a family nor even State can have objection to relationship of two major individuals who out of their own free will are living together. Decision of an individual who is of the age of majority, to live with an individual of his/her choice is strictly a right of an individual and when this right is infringed it would constitute breach of his/her fundamental right to life and personal liberty as it includes right to freedom of choice, to choose a partner and right to live with dignity as enshrined in Article 21 of the Constitution of India.

6. The Apex Court in **Shafin Jahan v. Asokan K.M (2018) 16 SCC 368**, decided on April 9, 2018, held as under:

"74. The principles which underlie the exercise of the jurisdiction of a court in a habeas corpus petition have been reiterated in several decisions of the Court. In Gian Devi v Superintendent, Nari Niketan, Delhi31, a three-judge Bench observed that where an individual is over eighteen years of age, no fetters could be placed on her choice on where to reside or about the person with whom she could stay:

> "7. Whatever may be the date of birth of the petitioner, the fact remains that she is at present more than 18 years of age. As the petitioner is sui juris no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter."
> (emphasis supplied)

75. The ambit of a habeas corpus petition is to trace an individual who is stated to be missing. Once the individual appears before the court and asserts that as a major, she or he is not under illegal confinement, which the court finds to be a free expression of will, that would conclude the exercise of the jurisdiction. In Girish v Radhamony a two judge Bench of this Court observed thus:

> "3 In a habeas corpus petition, all that is required is to find out and produce in court the person who is stated to be missing. Once the person appeared and she stated that she had gone of her own free will, the High Court had no further jurisdiction to pass the impugned order in exercise of its writ jurisdiction under Article 226 of the Constitution."

76. In Lata Singh v State of U.P, Bench of two judges took judicial notice of the harassment, threat and violence meted out to young women and men who marry outside their caste or faith. The court observed that our society is emerging through a crucial transformational period and the court cannot remain silent upon such matters of grave concern. In the view of the court:

"17 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 is not harassed by anyone 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." (emphasis supplied)

77. Reiterating these principles in Bhagwan Dass v State (NCT OF DELHI), this Court adverted to the social evil of honour killings as being but a reflection of a feudal mindset which is a slur on the nation.

78. In a more recent decision of a three judge Bench in Soni Gerry v Gerry Douglas, this Court dealt with a case where the daughter of the appellant and respondent, who was a major had expressed a desire to reside in Kuwait, where she was pursuing her education, with her father. This Court observed thus:

"9 She has, without any hesitation, clearly stated that she intends to go back to Kuwait to pursue her career. In such a situation, we are of the considered opinion that as a major, she is entitled to exercise her choice and freedom and the Court cannot get into the aspect whether she has been forced by the father or not. There may be ample reasons on her behalf to go back to her father in Kuwait, but we are not concerned with her reasons. What she has stated before the Court, that alone matters and that is the heart of the reasoning for this Court, which keeps all controversies at bay.

10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

79. These principles emerge from a succession of judicial decisions. Fundamental to them is the judgment of a Constitution bench of this Court in Kanu Sanyal v District Magistrate, Darjeeling.

7. A perusal of the aforesaid judgment manifests that the Apex Court has consistently respected the liberty of an individual who has attained the age of majority.

8. The Apex Court in **Shakti Vahini Vs. Union of India (2018) 7 SCC 192** came down heavily on the perpetrators of "honour killings", which the Court found not only horrific and barbaric but also interfering with the right to choose a life partner and the dignity of an individual. The Apex Court held as under:-

> "44. The concept of liberty has to be weighed and tested on the touchstone of constitutional sensitivity, protection and the values it stands for. It is the obligation of the Constitutional Courts as the sentinel on qui vive to zealously guard the right to liberty of an individual as the dignified existence of an individual has an inseparable association with liberty. Without sustenance of liberty, subject to constitutionally valid provisions of law, the life of a person is comparable to the living dead having to endure cruelty and torture without protest and tolerate imposition of thoughts and ideas without a voice to dissent or record a disagreement. The fundamental feature of dignified existence is to assert for dignity that has the spark of divinity and the realization of choice within the parameters of law without any kind of subjugation. The purpose of laying stress on the concepts of individual dignity and choice within the framework of liberty is of paramount importance. We may clearly and emphatically state that life and liberty sans dignity and choice is a phenomenon that allows hollowness to enter into the constitutional recognition of identity of a person. (emphasis supplied)
>
> 45. *The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation, none, we mean, no one shall be permitted to interfere in the fructification of the said choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness. When two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do*

so. And it can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation...

46. It has been argued on behalf of the "Khap Panchayats" that it is a misnomer to call them by such a name. The nomenclature is absolutely irrelevant. What is really significant is that the assembly of certain core groups meet, summon and forcefully ensure the presence of the couple and the family members and then adjudicate and impose punishment. Their further submission is that these panchayats are committed to the spreading of awareness of permissibility of inter-community and inter-caste marriages and they also tell the people at large how "Sapinda" and "Sagotra" marriages have no sanction of law. The propositions have been structured with immense craft and advanced with enormous zeal and enthusiasm but the fallacy behind the said proponements is easily decipherable. The argument is founded on the premise that there are certain statutory provisions and certain judgments of this Court which prescribe the prohibitory degrees for marriages and provide certain guidelines for maintaining the sex ratio and not giving any allowance for female foeticide that is a resultant effect of sex determination which is prohibited under the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex Selection) Act, 1994 (for short 'PCPNDT Act') (See : Voluntary Health Association of Punjab v. Union of India and others12 and Voluntary Health Association of Punjab v. Union of India and others13)

47. The first argument deserves to be rejected without much discussion. Suffice it to say, the same relates to the recognition of matrimonial status. If it is prohibited in law, law shall take note of it when the courts are approached. Similarly, PCPNDT Act is a complete code. That apart, the concern of this Court in spreading awareness to sustain sex ratio is not to go for sex determination and resultantly female foeticide. It has nothing to do with the institution of marriage." (emphasis supplied)

9. We are conscious that above observations were made in connection with “honour killings” but we are of the firm view that the said principle would apply in the present context too where a

relationship of two matured individuals is sought to be jeopardized at the whim and caprice of a parent.

10. We find from para 46 and 47 of **Shakti Vahini** (supra) that even if a marriage is prohibited in law, same shall be taken note of only when the courts are approached for recognition of such marriage, which finds further corroboration in the case of **NandaKumar vs. State of Kerala, (2018) 16 SCC 602** which after relying upon Shafin Jahan (supra) held that on attaining majority an individual is entitled to make his/her choice which is pivotal and cannot be infringed by anyone. The relevant paragraphs are quoted hereunder:-

> **"7. A neat submission which is made by the learned counsel for the appellants is that the High Court has adopted an approach which is not permissible in law by going into the validity of marriage. It is submitted that when Thushara is admittedly a major i.e., more than 18 years of age, she has right to live wherever she wants to or move as per her choice. As she is not a minor daughter of respondent No. 4, "custody" of Thushara could not be entrusted to him.**
>
> **8. Learned counsel for the appellants is right in his submission. Even the counsel for the State did not dispute the aforesaid position in law and, in fact, supported this submission of the learned counsel for the appellants.....**
>
> **12. The Court also emphasised due importance to the right of an adult person, which the Constitution accords to an adult person as under, (Shafin Jahan's case para 52)**
>
> > **"Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It has to be remembered that the realization of a right is more important than the conferment of the right. Such actualization indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition."**

11. Right to choose a partner irrespective of caste, creed or religion, is inhered under right to life and personal liberty, an integral part of the Fundamental Right under Article 21 of the Constitution of India. The Apex Court in **KS Puttaswamy vs Union of India (2017) 10 SCC 1** while deciding the issue of right to privacy, held as under:-

> **298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably inter-twined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realization of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. 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. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms Under Article 19 can be fulfilled where the individual is entitled to decide upon**

his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion Under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate Article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha suffixed right of privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination. (emphasis supplied)

299. Privacy represents the core of the human personality and recognises the ability of each individual to make choices and to take decisions governing matters intimate and personal. Yet, it is necessary to acknowledge that individuals live in communities and work in communities. Their personalities affect and, in turn are shaped by their social environment. The individual is not a hermit. The lives of individuals are as much a social phenomenon. In their interactions with others, individuals are constantly engaged in behavioural patterns and in relationships impacting on the rest of society. Equally, the life of the individual is being consistently shaped by cultural and social values imbibed from living in the community.

(emphasis supplied)

323. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy. Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is

an essential facet of the dignity of the human being; (emphasis supplied)

12. We now propose to deal with the judgment passed by learned Single Judge of this Court in **Noor Jahan** (supra). Noor Jahan along with her alleged husband approached this Court for claiming protection as it was alleged that she had embraced Islam after renouncing her Hindu identity to contract a Nikah with her Muslim husband. There were four more petitions filed by married couples, wherein the identity of a lady in each case was analogous to that of Noor Jahan. The writ Court recorded the following statements of the ladies who appeared in person before the Court.

Statement of Petitioner No.1 (girl) in Writ C No. 58129 of 2014

"सशपथ बयान किया कि मेरा नाम किरन पुत्री जयंत्री प्रसाद निवासी जंगलीपुर थाना भावानीगंज जिला सिद्धार्थनगर। याची सं0 1 ने समक्ष न्यायालय सशपथ बयान किया कि आज दिनॉक 3–11–14 को निम्नलिखित बयान दे रही हूॅं। मेरे पिता जी का नाम जयंत्री प्रसाद है मैं जंगलीपुर जिला सिद्धार्थनगर की रहने वाली हूॅं। मैं इण्टर मीडिएट तक पढ़ी हूॅं। मैं इलाहाबाद दिनॉक 20 अक्टूबर सन् 2014 को 5 बजे सायंकाल आई थी। मैं इलाहाबाद अकेली आई थी। मेरा निकाह नौ बजे दिन में इलाहाबाद में अब्दुल रहीम ने बबलू उर्फ इरफान के साथ करा दिया । यह निकाह अकबर पुर जिला इलाहाबाद में कराया गया था। मेरा धर्म परिवर्तन अब्दुल रहीम नि0 अकबरपुर जिला इलाहाबाद में कराया गया था। यह ध र्म परितर्वन उन्होंने शादी करने के लिए कराया था। यह धर्म परिवर्तन उन्होंने बबलू उर्फ इरफान जो कि याची संख्या दो है के कहने पर कराया था। धर्म परिवर्तन प्रमाण पत्र जो कि इस याचिका का संलग्नक तीन है मुझे अब्दुल रहीम ने अकबरपुर इलाहाबाद में दिया था। इस कागज के विषय में मैं कुछ नहीं जानती हूॅं। इस्लाम के बारे में मैं कुछ नहीं जानती हूॅं। कथित निकाहनामा जो याचिका का संलग्नक चार है में निकाह का स्थान नर्द हाईकोर्ट इलाहाबाद अर्थात् हाईकोर्ट के करीब लिखा हुआ है। यहॉ मेरा निकाह नहीं हुआ। ब्यान पढ़ व सुनकर तस्दीक किया"

Statement of Petitioner No.1 (Girl) in Writ C No. 62587 of 2014

"याची सं0 1 सोनम उर्फ प्रियंका ने समक्ष न्यायालय सशपथ बयान किया कि आज दिनॉक 21–11–14 को निम्नलिखित बयान दे रही हूॅं। मेरा नाम सोनम उर्फ प्रियंका है। मेरे पिता जी का नाम भगवान सिंह है। वह एक कृषक है। वह नगला लोधई गांव मे खेती करते है। मेरा निकाह कब हुआ, मुझे याद नही है।

Statement of Petitioner No.1 (Girl) in Writ C No. 60494 of 2014

याची सं0–1 ने समक्ष न्यायालय सशपथ बयान किया कि आज दिनॉक 13–11–14 को निम्नलिखित बयान दे रही हूॅं। मेरा नाम आयसा बेगम उर्फ अनीता विश्वकर्मा मेरे पिता जी का नाम श्री शिव सरन लाल है। वो कुण्डा प्रतापगढ में रहते हैं। मैं बी0ए0 तक पढ़ी हूॅं। मेरा धर्म परिवर्तन मो0 सलीम ने करवाया था । ये धर्म परिवर्तन श्री सलमान के साथ शादी करवाने के लिए

करवाया था। मेरा निकाह सलमान ने कचहरी, में करवाया । निकाह में क्या हुआ मुझे मालूम नहीं । मुझे इस्लाम के बारे में पता नहीं है।

Statement of Petitioner no. 1(girl) in Writ C No. 57068 of 2014 :-

"नूरजहॉ बेगम उर्फ अंजली मिश्रा एवं एक अन्य बनाम स्टेट आफ यू0पी0 एवं अन्य याची सं0 1 अंजली मिश्रा समक्ष न्यायालय सशपथ बयान किया – श्री अखिलेश मिश्रा मेरे पापा का नाम है। यह देवरिया में रहते हैं मैं इन्हीं के साथ रहती थी। मैं इण्टर तक पढ़ी हुई हूँ। मैं इस्लाम धर्म के बारे में कुछ नहीं जानती हूँ। दि0 23 सितम्बर 2014 को मेरा धर्म परिवर्तन मो0 सलीम याची सं0 2 के घर पर कराया गया था। जब यह धर्म परिवर्तन कराया गया तब मैं अलग कमरे में बैठी थी और बाहर मौलवी निजाम अहमद बैठे थे उसी समय निकाह हो गया था मौलवी साहब ने कराया था। श्री मो0 सलीम साड़ी का ब्यापार करते हैं। शादी करने के लिए यह धर्म परिवर्तन हुआ था।"

Statement of Petitioner no. 1(girl) in Writ C No. 58910 of 2014 :-

"मेरा नाम सोनी उर्फ साबिया, पत्नी सगीर अहमद है। मेरे पिता का नाम रमेश चन्द्र है। मैं इस याचिका में याचिनी सं0 1 हूँ। मैं 217 सम्भल गेट चंदौसी जिला सम्भल की रहने वाली हूँ।

मै सशपथ बयान करती हूँ कि– मेरे पिता जी मेंथा फैक्ट्री में नौकरी करते हैं। मैं स्नातक की छात्रा हूँ। मैं इस्लाम धर्म के बारे में नहीं जानती हूँ। मुझे शादी के लिए इस्लाम धर्म कुबुल करवाया गया। मुझे सगीर अहमद याची सं0 2 के उपस्थिति में इस्लाम धर्म कुबुल करवाया गया। यह कुबूलनामा 15 जुलाई 2014 को हुआ। सगीर अहमद जी ने मेरे साथ निकाह 1 अगस्त 2014 को किसी काजी से कराया। उन्होंने यह निकाह मौहम्मद हुसैन के घर पर करवाया। मुझे नहीं मालूम कि निकाहनामा जो याचिका संलग्नक सं0 2 है के अनुसार निकाह 10 अगस्त 2014 को करवाया गया । सगीर अहमद शीशे का काम मजदूरी पर करते हैं।"

13. We find from the judgement in Noor Jahan's case that no doubt the ladies in question could not authenticate their alleged conversion as they were unable to show the knowledge regarding the basic tenets of Islam, the writ court against the above background held that the alleged marriage was illegal as it was performed after a conversion which could not be justified in law.

14. We lest not forget that couples in Noor Jahan and other cognate petitions preferred a joint petition on the basis of alleged conversion of one of the partners. Once the alleged conversion was under clout, the Constitutional Court was obliged to ascertain the wish and desire of the girls as they were above the age of 18 years. To disregard the choice of a person who is of the age of majority would

not only be antithetic to the freedom of choice of a grown up individual but would also be a threat to the concept of unity in diversity. An individual on attaining majority is statutorily conferred a right to choose a partner, which if denied would not only affect his/her human right but also his/her right to life and personal liberty, guaranteed under Article 21 of the Constitution of India. We say so for the reason that irrespective of the conversion being under clout, the mere fact that the couple was living together, the alleged relationship can very well be classified as a relationship in the nature of marriage distinct from the relationship arising out of marriage, in view of the provisions of Protection of Women from Domestic Violence Act, 2005.

15. The judgment in **Priyanshi** (supra) followed **Noor Jahan** (supra). None of these judgments dealt with the issue of life and liberty of two matured individuals in choosing a partner or their right to freedom of choice as to with whom they would like to live. We hold the judgments in **Noor Jahan** and **Priyanshi** as not laying good law.

16. We before parting wish to reiterate that we are quashing the FIR primarily on the ground that no offences are made out, as discussed above, as also the fact that two grown up individuals are before us, living together for over a year of their own free will and choice. The ultimate contention on behalf of the informant was that he be afforded visiting rights to meet his daughter. Once petitioner no. 4 has attained majority, then it is her choice, as to whom she would like to meet. We, however expect the daughter to extend all due courtseys and respect to her family.

17. We clarify that while deciding this petition, we have not commented upon the validity of alleged marriage/conversion.

18. In view of above discussion, the writ petition succeeds and is **allowed.** The F.I.R. dated 25.08.2019 registered as Case Crime No.

0199 of 2019, under Sections 363, 366, 352, 506 IPC and Section 7/8 POCSO Act, Police Station- Vishunpura, District Kushi Nagar as well as all consequential proceedings are hereby quashed.

Order Date :- 11.11.2020
Ujjawal/Chandra

(Vivek Agarwal, J)(Pankaj Naqvi,J)