

Salamat Ansari v. State of UP

Case No. – CrI. Mis. Writ Petition No. 11367 of 2020

Petitioner :- Salamat Ansari & 3 others

Respondent :- State of UP & 3 others

Date of Judgement :- 11th November 2020

Bench :- Justice Vivek Agarwal & Justice Pankaj Navqi

INTRODUCTION

From the ancient period women were treated as a toy in every era starting from Indus Valley Civilisation till recent times. They are always discouraged to do what they want. India being a patriarchal society girls are unwelcomed from their birth. They are not equally treated with men in every aspect of life. Marriage has been considered as a sacrament in our country. Being a holy thing it is performed with joy all over the country. This holiness is being tortured in every field. Generally in India, both women and Muslims lack sufficient social and political safeguards to pose any major challenge to such stereotyping and demonization. Inter-faith marriage between Hindu women and Muslim men are discouraged. Such marriage is considered as a conspiracy meriting the protection of what it protects as the gullible and imprisonment of what it condemns as the wicked. It is being seen as a sin committed in our society. With the rise of politics into such matters, the Government of today's seeks to shatter the choices and freedoms of Indian women by confining them to the domestic sphere, even deciding whom to love and whom to live with.

FACTS

The two individuals namely Salamat Ansari and Priyanka Kharwar were well-known to each other and were in a relationship. They decided to get married together according to the Muslim rituals i.e. by performing Nikkah. They performed their Nikkah on 19th August 2019. The daughter Priyanka Kharwar went against her parent's will and married to a non-Hindu. Before performing Nikkah, Priyanka Kharwar changed her religion from Hindu to Muslim. As a result of which she also changed her name to Alia. After seeing the incident the parents of the Priyanka Kharwar @ Alia, had filed a FIR against the Muslim man Salamat Ansari on 25th August 2019 at the Vishnupura Police Station, Khushinagar. The petitioner Salamat Ansari and his wife Priyanka Kharwar along with two others had approached the High Court by invoking

the extra ordinary jurisdiction, seeking the order to quash the FIR that has been lodged against them on 28th August 2019 as case crime number 0199 of 2019 under section 363, 366, 352, 506 of IPC and section 7 & 8 of POCSO Act.

ISSUES

Looking after the facts, the issues raised was whether the marriage performed is valid or not, when conversion made just before the marriage.

ARGUMENTS

The respondent was represented by the Sri Ritesh Kumar Singh, learned council for informant i.e Priyanka Kharwar @ Alia's Parents and Sri Deepak Mishra, the learned A.G.A. Conversion of religion generally means abandoning of adherence to one denomination and affiliating with another. Every individuals have the right to convert from one religion to other. These conversion of individuals is valid when it is predicated on "change of heart" and "honest conviction". The purpose of conversion other than this is invalid and uninviting to society. The counsels citing a pair of cases of *Noor Jahan Begum vs State of UP AIR 1964 All 236* and *Priyanshi vs State of UP Cr. No. 21556 of 2019* which states that conversion to other religion solely for the purpose of getting married is illegitimate and invalid and not accepted by the society. In the present case, marriage of Salamat Ansari and Priyanka Kharwar @ Alia has no sanctity in the law. The women Priyanka has married just after renouncing her Hindu identity and embracing to Muslim, which clearly states the sole motive of conversion is marriage.

On the other hand, petitioner which was represented by Sri Rakesh Kumar Mishra contradicted the respondent and stated that Priyanka Kharwar and Salamat Ansari are major and competent enough to contract a marriage. This couple has been living peacefully and happily as husband and wife since one year. There is no dispute as the couple had attained the age of majority. To determine the age of the Priyanka Kharwar @ Alia just under the Juvenile Justice Act, 2015 whether she is capable to make her decisions, the date of birth of High School Certificate which is on 7th July 1999 was produced which clearly says the age of Priyanka is major when the FIR is lodged.

The counsels very well opposed the charge put on the petitioner in FIR by proving it step by step. When the marriage was commenced the petitioner was around 21 years old as being proved through High School Certificate. She is major and sufficient enough to make her own decision. In this case Priyanka Kharwar @ Alia had left her home in order to live with Salamat

Ansari, therefore the petitioner cannot be accused of committing offence under section 363 & 366 of IPC. Similarly as the Priyanka is no more a juvenile so the offence under section 7 or 8 of POCSO cannot be applied. Also the offence under section 352 and 506 of IPC i.e assault or criminal force & criminal intimidation respectively is not appropriate in this case, starting from leaving her home then conversion till the marriage is a voluntary act of Priyanka, there is no mala-fide intention of petitioner and his family.

When the law permits the two individual of same sex to live together peacefully then neither any person nor family nor even state should have any objection and interfere in their personal life. There would be a serious encroachment of person's personal right to privacy as enshrined under Article 21 of Constitution of India when any person's right to choose his/her partner and to live together is in a vulnerable stage.

To brace their arguments counsels referred some precedents such as *Shafin Jahan vs Ashokan K.M. (2018) 16 SCC 368* which says that no fetter could be placed on her choice and with whom to live with when an individual is above 18 years. Neither the court nor the relatives of petitioner can substitute their opinion or preference on petitioner's choice.

In *Lata Singh vs State of UP (2006) 5 SCC 475*, which is a two judge bench commented on the threat, harassment and violence faced by young women and men who marry outside their caste. The court observed that India is a free and democratic country. Once a person became major he/she can marry whosoever he/she wants to. If the parents of boy or girl do not approve such inter-caste or inter-religion marriage, maximum they can do is cut-off social relation from their son or daughter instead of giving threat or instigate by any act of violence or harass the person who undergo such marriage.

Privacy is an essential aspect of dignity. Referring to *K S Puttaswamy vs Union of India (2017) 10 SCC 1*, counsels remarked that right to choose a partner irrespective of caste, creed or religion is inhered under right to life and personal liberty which forms an integral part of Article 21 of Constitution. Privacy is the ultimate expression of sanctity of individuals. It is the body that entitles an individual to the integrity of physical aspect of personhood. Privacy enables the individual to retain the autonomy of body and mind. The autonomy of the individual is the ability to make decision on matter of concern to life. The intersection between one's mental integrity and privacy entitles the individual the freedom of thoughts, the freedom to believe in what is right and freedom of self-determination. When these guarantees intersect with genders creates a private space that protects all those elements crucial to gender identity. The family,

marriage, procreation and sexual orientation are all integral to the dignity of individual. In these case Priyanka Kharwar @ Alia has every right to choose her partner with whom she wants to live with and any interference will leads to violation of her fundamental rights. Simultaneously she also has the right to profess any religion and her ability to choose any faith as enshrined under Article 25 of Indian Constitution.

The FIR lodged by respondent was a malice and mischief with an intention to bring an end the marital ties. There is no such offence being committed by them by such act of marriage as has been mentioned in FIR.

JUDGEMENT

The fundamental rights of the individual is hampered when there arise any vulnerability towards the matter related to intimate and personal choice. The Indian Society is based on the foundation individual's dignity which means that person's freedom is not conditional on caste, creed or religion that her partner might claim to profess. The Hon'ble judges of the Allahabad High Court held that any such religious conversion made solely for the purpose of marriage, constitute a valid. A person is at liberty to do whatever he wants to do before the marriage. The two above mentioned individual are major & matured enough to take their decision of their choice. Referring to Puttaswamy case every individuals have the intrinsic right to control the vital aspect of their life i.e right to privacy which includes personal intimacies, sanctity of family life, marriage, procreation, home and sexual orientation. Here Salamat and Priyanka are not Muslim and Hindu, rather two individuals who out of their free will are living together peacefully. Right to live with his/her partner irrespective of religion professed is an intrinsic part of right to life and personal liberty. None of the judgement as been mentioned by the respondent i.e in Priyanshi case and Noor Jahan case provides a good supportive points about the personal life and liberty of two matured individuals in choosing their partners and their absolute right with whom they want to live with.

Court further held that it is upon the daughter's right to decide whom she wants to meet and thus expected that she will allow her family to meet her with due respect and courtesy. The Court along with above decisions also quashed the FIR as filed by the respondent as there were no such grounds which will clearly shows that offence was committed by the two matured individuals. Thus thereby validating the conversion and subsequent marriage.

CONCLUSION

Killing of the two birds with one stone by combining it with the demonization of the largest minority of the country. Over last few decades the country is observing such heinous crime of obstructing the two loved ones from living together. India being a largest democratic country provide ample of fundamental rights to its citizen right from the birth. Everyone has equal right to profess his/her religion without any interference from state or relatives. The concept of liberty is regarded as the touchstone of constitutional sensitivity, protection and values it stands for. The purpose of laying stress on the concept of individual dignity and choice within the framework of liberty is of paramount importance. Interfering into marital life of a person is equal to interfering into privacy of someone. They have an absolute right to choose their partner and live happily whom they want. We need to eradicate the evil practice and ideology of person in modern era.

