*HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
*HON'BLE SRI JUSTICE B. V. L. N. CHAKRAVARTHI

+WRIT PETITION No.21881 OF 2023

%24.08.2023

Devi Bulli Venkanna,

……Petitioner

And:

$1. State of Andhra Pradesh,
Rep. by its Secretary,
Home Department,
Secretariat,
Velagapudi,
Guntur District,
and others.

….Respondents.

!Counsel for the petitioner : Sri V. V. L. N. Sarma

^Counsel for the respondents : Sri Y. N. Vivekananda, learned counsel for the respondent Nos.1 to 4.

<Gist:

>Head Note:

? Cases referred:

1. (2018) 16 SCC 602
2. (2018) 16 SCC 368
3. (2023) SCC Online All 323
4. (2023) SCC Online All 621
5. (2023) SCC Online All 488

HIGH COURT OF ANDHRA PRADESH

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1. State of Andhra Pradesh,
   Rep. by its Secretary,
   Home Department,
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   and others.

….Respondents.

DATE OF JUDGMENT PRONOUNCED: 24.08.2023.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE B. V. L. N. CHAKRAVARTHI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

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RAVI NATH TILHARI, J

____
B. V. L. N. CHAKRAVARTHI, J

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE B. V. L. N. CHAKRAVARTHI

WRIT PETITION No.21881 of 2023

JUDGMENT:- *(per Hon'ble Sri Justice Ravi Nath Tilhari)*

Heard Sri V. V. L. N. Sarma, learned counsel for the petitioner and Sri Y. N. Vivekananda, learned counsel for the respondent Nos.1 to 4.

2. This writ petition under Article 226 of the Constitution of India has been filed for issue of a Writ of Habeas Corpus or any other appropriate writ, order or direction directing the Respondents to produce the person of 'A' daughter of the respondent No.5 (We have not mentioned the full particulars as in the prayer, but are referring to the alleged detenue as 'A') before this Court and to set her at liberty and grant such other relief or reliefs as this Honble Court may deem fit and proper in the circumstances of the case.

3. The petitioner's case is that the petitioner is married to one Kamala Kumari and blessed with a child. Due to some disputes between them she filed some cases against the petitioner including MC, 498-A etc. The petitioner also filed divorce OP against his wife.

4. With respect to the prayer for Writ of Habeas Corpus to produce the daughter of the respondent No.5, 'A', the petitioner's case is that she is major and came to the petitioner's place in the Month of July, 2023. They have been living together in relationship. The respondent No.5 gave some complaint to the Palakoderu Police Station, West Godavari regarding missing of 'A'. On such complaint, the Police called the petitioner on 23.07.2023. Both went to Police Station on 25.07.2023. Later on, on 27.07.2023, the respondent No.5 with his family members and some others, about 20 persons came to the house of the petitioner's relative, abused the petitioner and forced 'A' to accompany them. The petitioner also alleged about some snatching of the petitioner's mobile, some cards etc. It was further alleged that the petitioner's complaint was not received by the respondent No.4 who did not take any action, as well. On the said averment, submitting that the custody of 'A' with the respondent No.5 is illegal custody the Writ of Habeas Corpus has been prayed.

5. We find that even as per the averments in the writ petition, the petitioner is married to one Kamala Kumari. There is no divorce though it is alleged that the divorce petition is pending.

6. We further find that the date of 'A' allegedly going to the petitioner is in the month of July, 2023. With respect to the incident dated 27.07.2023, though it is submitted that the petitioner's complaint was not received by the respondent No.4, but any copy of such representation is not annexed to the writ petition. Further if the report was not received, what further action the petitioner took, as was open under law, has also not been disclosed. If the report was not received, the petitioner could have approached the Senior Superintendent of Police or/and could also have sent the complaint through registered post and he could also have approached the competent Court of law under Section 156 (3) of the Code of Criminal Procedure (Cr.P.C) of even under Section 200 Cr.P.C. But nothing has been brought on record, except bald allegation without any evidence/material in the form of documents annexed to the writ affidavit.

7. Filing a Writ for Habeas Corpus seeking production of alleged detenue in Court and setting him or her free from the parental home in particular, and that too at the instance of a person, as the present petitioner, a married person seeking liberty of a girl, may be major, on the ground of the petitioner allegedly living in relationship with her, in our view, cannot be encouraged.

8. We are not oblivious of the freedom of an individual attaining the age of majority, of his/her right to marry a person of choice or of even living in relationship with person of own choice without entering into wedlock, as such right of a person is considered a fundamental right to life and personal liberty flowing from Article 21 of the Constitution of India.

9. In ***Nandakumar and another vs. State of Kerala and others***[1], the Hon'ble Apex Court observed and held that it is sufficient that both were major even if they were not competent to enter into wedlock, which position itself was disputed, they have right to live together even outside wedlock. It was also observed that 'live-in relationship' is recognized by the Legislature itself which finds place under the provisions of the Protection of Women from Domestic Violence Act, 2005.

10. In ***Nandakumar (supra)***, the Hon'ble Apex Court referred to its previous judgment in ***Shafin Jahan vs. Asokan K.M.***[2], in which it was observed that the Writ of Habeas Corpus is "a great constitutional privilege" or "the first security of civil liberty". The following observations as in Para 11 of ***Nandakumar (supra)*** are being reproduced as under:-

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[1] (2018) 16 SCC 602
[2] (2018) 16 SCC 368

*“**11.** In a recent judgment rendered by this Court in Shafin Jahan v. Asokan K.M. [(2018) 16 SCC 368], after stating the law pertaining to writ of Habeas Corpus, this writ has been considered as “a great constitutional privilege” or “the first security of civil liberty”. The Court made the following pertinent observations:-*

*“**27.** Thus, the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subgterfuge. The role of the Court is to see that the detenue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint. The issue will be a different one when the detention is not illegal. What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the Constitution guarantees. **It is so as the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework**. Once that aspect is clear, the enquiry and determination have to come to an end.*

***28.** In the instant case, the High Court, as is noticeable from the impugned verdict, has been erroneously guided by some kind of social phenomenon that was frescoed before it. The writ court has taken exception to the marriage of the Respondent No. 9 herein with the appellant. It felt perturbed. As we see, there was nothing to be taken exception to. Initially, Hadiya had declined to go with her father and expressed her desire to stay with the Respondent No.7 before the High Court and in the first writ it had so directed. The*

adamantine attitude of the father, possibly impelled by obsessive parental love, compelled him to knock at the doors of the High Court in another Habeas Corpus petition whereupon the High Court directed the production of Hadiya who appeared on the given date along with the appellant herein whom the High Court calls a stranger. But Hadiya would insist that she had entered into marriage with him. True it is, she had gone with the respondent No. 7 before the High Court but that does not mean and can never mean that she, as a major, could not enter into a marital relationship. But, the High Court unwarrantably took exception to the same forgetting that parental love or concern cannot be allowed to fluster the right of choice of an adult in choosing a man to whom she gets married. And, that is where the error has crept in. The High Court should have, after an interaction as regards her choice, directed that she was free to go where she wished to."

11. In ***Shafin Jahan (supra)***, the Hon'ble Apex Court held that the issue is a different one when the detention is not illegal. What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the Constitution guarantees. It is so as the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework.

12. In ***Nandakumar (supra)***, the Habeas Corpus petition was filed by the father. The appellant No.1 therein had married the

daughter of the respondent No.4 therein. There was no dispute with respect to the age of the 1st appellant and the daughter. Both were major. The question was about the marriageable age of the 1st appellant, the husband. He was less than 21 years of age. The daughter was of 19 years of age. She was of the marriageable age as the marriageable age of the females is 18 years. She was competent to marry. But with respect to the 1st appellant, husband, he was under 21 years of age which is the marriageable age for male. The Hon'ble Apex Court held that even if the 1st appellant was less than 21 years of age, marriage between the parties was not null and void. As per Section 12 of the Hindu Marriage Act, 1956 the marriage at the most would be a voidable marriage. It was in that context with respect to the spouses of the marriage, one of which was less than the marriageable age, but both were above the age of 18 years, that the right to live in, even outside the wedlock was considered. There, 'outside wedlock', was as the marriage was a voidable marriage only on the ground of the husband being under age of 21 years.

13. ***Nandakumar (supra)*** was not a case of the persons living in relationship, where man was married to another women and such marriage was subsisting.

14. In ***Shafin Jahan (supra)***, it has been clearly laid down by the Hon'ble Apex Court that expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework.

15. In ***Nandakumar (supra)***, the choice of the 1st appellant therein and the daughter of the respondent No.4 did not transgress any valid legal framework.

16. In ***Nandakumar (supra)***, it has been observed and held that live-in relationship is recognized by the legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.

17. Such recognition is for the protection of women to save her from the domestic violence. Such recognition of live-in relationship is for a specified purpose where the couple who live-in relationship, as husband and wife, and if some domestic violence takes place with the women, the husband or the family members cannot escape from the clutches of the Act 2005 on the ground that they were not married and consequently the provisions of the Act would not be attracted. The object of the Domestic Violence Act, 2005 in our view, in such recognition, cannot be to encourage live-in relationship nor to transgress any valid legal framework.

18. In ***Kiran Rawat and another vs. State of Uttar Pradesh***[3], the Division Bench of the High Court of Judicature at Allahabad (Lucknow) observed that live-in relationship is no where defined in the Domestic Violence Act, but the Supreme Court in ***D. Velusamy vs. D. Patchaiammal*** [(2010) 10 SCC 469]; while considering the definitions given under Section 2 of the Domestic Violence Act, dealt with definition of "domestic relationship", as a relationship in the nature of marriage. It laid down certain conditions which if fulfilled would amount to a "domestic relationship", such conditions include long duration of live-in relationship, a shared household, pooling of resources and financial arrangements, sexual relationship, holding out to the society as husband and wife. The Allahabad High Court considered ***Nandakumar (supra)***, and observed in Para 18 that the observations of the Supreme Court as aforesaid cannot be considered to promote such relationships. Law traditionally has been biased in favour of marriage. It reserves many rights and privileges to married persons to preserve and encourage the institution of marriage.

19. Para 18 of ***Kiran Rawat (supra)*** is reproduced as under:-

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[3] (2023) SCC Online All 323

> *"**18.** The observations of the Supreme Court as aforesaid however cannot be considered to promote such relationships. Law traditionally has been biased in favour of marriage. It reserves many rights and privileges to married persons to preserve and encourage the institution of marriage. The Supreme Court is simply accepting a social reality and it has no intention to unravel the fabric of Indian family life. Awareness has to be created in young minds not just from the point of view of emotional and societal pressures that such relationships may create, but also from the perspective that it could give rise to various legal hassles on issues like division of property, violence and cheating within live-in relationships, rehabilitation in case of desertion by or death of a partner and handling of custody and other issues when it comes to children born from such relationships. Partners in a live-in relationship do not enjoy an automatic right of inheritance to the property of their partner. In Vidhyadhar Versus Sukhrana Bai [2008 (2) SCC 238], the Supreme Court created some hope for persons living together as husband and wife by providing that those who have been living in a relationship for a reasonably long period of time can receive property in inheritance from her live-in partner. In this case property of a Hindu male upon his death intestate was given to a woman with whom he enjoyed a live in relationship, even though he had a wedded wife alive."*

20. In ***Kiran Rawat (supra)***, the petitioners approached for a Writ of Mandamus for direction to the respondents therein not to disturb the peaceful living of the petitioners, the Allahabad High Court observed that the petitioners did not state that they

were valid marriage couple. They did not claim for protection of the marital relationship which was allegedly being interfered with by their parents or relatives. They only alleged that their being major they were entitled to live with whomsoever they liked and the mother of the petitioner therein was unhappy with that relationship. It was held that the writ jurisdiction being extraordinary jurisdiction is not to resolve the dispute between two private parties, by intervention of the writ court in the garb of violation of Article 21 of the Constitution of India, unless harassment is established beyond doubt. If there was any real grievance of a couple against their parents or relatives who were allegedly interfering with a live-in status, and there was a threat of life, they were at liberty to lodge an F.I.R under Section 154 (1) or Section 154 (3) Cr.P.C, with the Police or move an application under section 156 (3) before the competent Court or file a complaint case under Section 200 Cr.P.C. It was further observed that neither of the actions were taken against each other, and only a fictitious application with certain allegations, particularly by such persons as the petitioners therein enjoying a live-in relationship, was moved under Writ jurisdiction of the High Court. It appeared to be a circuitous way to get the seal and signature of the High Court upon their conduct without any verification of their age and other necessary aspects required to

be done by the appropriate authority. The petitioners could not be allowed to raise disputed questions of fact under writ jurisdiction as it would be a wrong assumption of such extraordinary jurisdiction.

21. Para 19 of ***Kiran Rawat (supra)***, is reproduced as under:-

> *"19. The Supreme Court has observed on several occasions that section 125 Cr. P. C. is not meant for granting of maintenance to the "other woman", where a man having a living lawfully wedded wife either married a second time or started living with a concubine it has refused to extend the meaning of the word wife as denoted in section 125 of the Cr. P. C. to include such live-in partners for maintenance claims. Persons entering into marriage are governed either by their personal laws or laws such as the Special Marriage Act, 1954. While marriage between Hindus is considered being a Samskara (a sacrament), and under Muslim, Christian, Jewish and Parsi law marriage is a contract. Marriages are solemnized and/or registered under the provisions of the Special Marriage Act, 1954 and then alone they become a civil contract. A marriage is deemed to have ended only after a formal divorce is declared by a Court of law. "Maintenance" as defined under the Hindu Adoption and Maintenance Act 1956 includes in all cases provisions for food, clothing, residence, education and medical attendance and treatment and Section 18 of the Act confers the right on the Hindu wife to be maintained by husband. However, the Act of 1956 does not include*

concubines or mistress in the list of persons to be maintained."

22. In ***Hina Khatoon and another vs. State of U.P. and others***[4], ***Kiran Rawat (supra)***, was followed.

23. In ***Sunita Devi and another vs. State of Uttar Pradesh and others***[5], the Division Bench of the Allahabad High Court after referring to ***Himani vs. State of Haryana***, judgment of Punjab and Haryana High Court, where the length of live-in-relationship was not even mentioned, as also ***Indra Sarma vs. V. K. Sarma*** [(2013) 15 SCC 755], which was a case of believing of relationship where there was domestic violence perpetrated and defence was taken that there was no marriage, observed that it cannot be said that the relationship outside the matrimony has also to be recognized under Indian law. The Division Bench of the Allahabad High Court further observed that it could not be said that the petitioners therein were living as husband and wife and it was evident from the record as also the submission of the learned counsel for the petitioner therein that the marriage of petitioner No.1, with the respondent No.3 therein have yet not been dissolved. It was further observed that the writ petition was nothing else but filed

[4] 2023 SCC Online All 621
[5] 2022 SCC Online All 488

with a purpose of obtaining seal of that court on their illegal relationship, and granting of such prayer in the background of the factual scenario, would be against the very tenets of marital life of people. The personal autonomy rather than notion of social morality can be looked into but not at the stage when there is less period of cohabitation. There was also no such complaint made to the Police authority and if there was threatening of any kind that could be investigated if at all in accordance with law by the Police.

24. Para 10 of the ***Sunita Devi (supra)***, is reproduced as under:-

> *"10. Thus, saying that India is governed by Constitution of India and we are not living in primitive days makes no difference as in the present case it cannot be said that petitioners are living as husband and wife and it is evident from the record and submission of learned counsel for the petitioner that the marriage of petitioner No.1, Sunita Devi, with respondent No.3, Ranveer Singh, has not yet been dissolved. Moreover, there is nothing on record to show as to when the respondent No.3 threatened her while being in live-in-relation as till September, 2021 she says that she was with her husband and children."*

25. In the present case, for the fact as disclosed in the writ petition, the petitioner is already married to another woman. The marriage is subsisting. There is allegation of alleged living

in relationship with 'A'. There is no material annexed to the writ petition in support of the alleged incident. Filing of the writ petition appears to us to be a device adopted to have a seal and signature of this Court on the illegal act of the petitioner, transgressing the valid legal framework of his marriage. There is no factual foundation supported with material, to inspire confidence that it is a case of violation of one's fundamental right under Article 21 of the Constitution of India, or of any illegal custody of 'A', by her father respondent No.5.

26. One's choice to live outside wedlock, does not mean that the married persons are free to live in live-in relationship, with others outside wedlock during subsistence of marriage. That would be transgressing, valid legal framework. The right to live out of wedlock is to be understood, living without solemnizing marriage, if they are major. They are not bound to marry each other. But, that does not mean living in live-in relationship, with others, outside wedlock, during continuance of marriage.

27. We are of the view that the petitioner cannot claim his choice to live-in relationship with 'A' as the same would transgress the valid legal framework under the provisions of the Hindu Marriage Act in particular.

28. We are not inclined to invoke the writ jurisdiction for a Writ of Habeas Corpus, to direct production of 'A', on such

averments, transgressing the personal liberty of 'A' by exposing her to public and asking her choice, on such bald allegations and out of legal framework. 'A' has fundamental right to live with dignity under Article 21 of the Constitution of India which may also be under attack by the petitioner by filing this petition. A Writ of Habeas Corpus cannot be issued in a routine manner for production of corpus of a person in Court. Reasonable grounds must be shown. Though a writ of right but not a writ of course.

29. The Writ Petition is dismissed.

No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

RAVI NATH TILHARI, J

B. V. L. N. CHAKRAVARTHI, J

Date: 24.08.2023
SCS

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HON'BLE SRI JUSTICE B. V. L. N. CHAKRAVARTHI

WRIT PETITION No.21881 of 2023
(per Hon'ble Sri Justice Ravi Nath Tilhari)

Date: 24.08.2023

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