

Court No. - 80

Case :- WRIT - C No. - 17224 of 2024

Petitioner :- Smt. Sana Parveen And Another

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Anand Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Vinod Diwakar,J.

1. I have heard the learned counsel for the petitioners, the learned Standing Counsel for the State respondents, and have perused the record.

2. The instant petition has been filed by the petitioners seeking a direction to the police/respondents to protect their lives and property from their parents.

3. The petitioners claim that they solemnized their marriage according to Muslim customs of their own free will on 30.2.2024 at Jama Masjid, Jaitwara, District Moradabad, against the wishes of their parents. Subsequently, a notary affidavit was prepared in Prayagraj with the heading "*Vaivahik Anubandh Patra*," which outlines certain rights and liabilities, hereinafter referred to as the 'instrument.' The petition also annexed with the Nikahnama, *Vaivahik Anubandh Patra*, the PAN Card of petitioner No. 1 (issued by the Income Tax Department, showing her date of birth as 1.1.2003), and the PAN Card of petitioner No. 2 (showing his date of birth as 1.1.2000).

4. The learned Additional Chief Standing Counsel submits that, upon examination of the documents, it appears that the documents attached to the petition may be forged to obtain a protection order from this Court. He further submits that it has been observed in

numerous petitions that such documents are often found to be forged.

5. This Court has also noted that in several petitions, marriages are presented as being solemnized through a *Vaivahik Anubandh Patra*- an instrument detailing the rights and liabilities of the bride and groom. This is particularly observed in cases where marriages are claimed to have been solemnized according to Hindu customs and traditions, in contravention of Section 5 of the Hindu Marriage Act, 1955. It has also been noted that the Marriage Registrar's office routinely registers such marriages based on invalid instruments like the *Vaivahik Anubandh Patra* and forged documents prepared by the applicants duly notarized by the Public Notary appointed by the Government in cases of marriage secretly performed by the runaway couples- mostly underage. The Court receives numerous similar cases daily.

6. During the proceedings, several issues have arisen for consideration, which can be outlined as follows:

(i) In many cases, elopement are alleged to have been solemnized through notarized instruments;

(ii) Often, birth certificates, Aadhar Cards, PAN Cards, and/or mark sheets are found to be forged to falsely claim the majority age of one of the parties;

(iii) Girls are generally claimed to be illiterate, whereas police reports often reveal that the girls have passed either the 8th or 10th standard. This information is intentionally concealed to show the girls as being over 18 years old;

(iv) The petitioners appear to be from rural areas of India and are likely from below the poverty line, based on the petition's content,

annexed photographs, and the manner in which the marriage is purportedly solemnized. A photocopy of a PAN Card is used to show the age of majority;

(v) Documents submitted to the Marriage Officer in cases of eloped marriages by runaway couples, performed in contravention of Section 5 of the Hindu Marriage Act, are forged to falsely indicate that the girls are over 18 years old. In reality, these girls are often more or less around 14 years of age as could be easily understood from the facts-circumstances of each case. The elopements are conducted in violation of the provisions of Child Marriage Restraint Act, 1929 and later registered with office of Marriage Registrar based on forged marriage certificates issued by certain trusts or societies, mushroomed in Delhi – NCR and in Metro Cities. In essence, all the documents used for the purpose of procuring either marriage certificate by trust or registration certificate from the office of Marriage Registrar are signed by Public Notary, therefore, Public Notary assumes significance for the purpose of either solemnization of marriage or registration of marriage in case of marriages secretly performed by runaway couples- mostly underage.

7. Based on the above discussion, it is prudent to seek a response from the Department of Legal Affairs, Ministry of Law and Justice, Government of India- the appointing authority of the Public Notary- regarding the issues detailed above before coming to a conclusion. For clarity, **(i)** whether a Public Notary is competent to notarize an instrument, referred herein above, created in contravention of Section 5 of the Hindu Marriage Act, **(ii)** whether the Public Notary shall verify the authenticity of contents of notarized documents before putting circular seal of 5 cm diameter, **(iii)** whether legally enforceable duties that arise from

such instruments has a binding effect on the parties in view of the fact that the same are notarized by Public Notary, and **(iv)** whether the Public Notary can notarize an invalid instrument like *Vaivahik Anubandh Patra*. The department is also requested to provide suggestions for addressing such related and incidental issues created by such notarized instruments. The affidavit should also outline proposed actions to address and regulate the affairs of Public Notaries found involved in notarizing instruments in contravention of Notaries Act, 1952 at district level.

8. An officer not below the rank of Joint Secretary in the Department of Legal Affairs, Ministry of Law and Justice, Government of India, is directed to file an affidavit addressing the Court's concerns on or before the next date of hearing. The officer may file affidavit through Registrar (Compliance) on compliance@allahabadhighcourt.in.

9. As this matter concerns the sanctity of marriage- a pious institution affecting structured social relations, family formation, property rights, inheritance, tax benefits, and other legal responsibilities- the Joint Secretary, Ministry of Law, is expected to give this issue the highest priority and sensitivity so that the affairs of Public Notaries could be regulated effectively at district level.

10. For illustration, a Writ-C No.12032 of 2024 (Rani Pandey and Another vs. State of U.P. and Others) was filed seeking protection from the petitioners' parents as their marriage was solemnized against their wishes. When notice was sent to the respondents, it was discovered that the petitioner had never visited the High Court or filed such a writ petition. An inquiry conducted by the Registrar General revealed that the petitioner had never come to the High

Court or filed the instant writ petition, which was based on documents notarized by a Public Notary, to allegedly malign the character and reputation of the petitioner Rani Pandey by the estranged husband and his friends enabling him to seek a divorce through an order procured from this Court by filing a fake and frivolous couple protection petition, as per petitioner no.1's counsel.

11. A response with suggestions also be filed by the Principal Secretary (Law), Government of Uttar Pradesh, on similar lines, by the next date of hearing. If the Principal Secretary (Law) thinks that the involvement of office of DGP, Uttar Pradesh is also required to deal with the issues outlined herein above, based on the inputs received from ground level policing at district level, a copy of this order be forwarded to the office of DGP, Uttar Pradesh by the Principal Secretary (Law), Uttar Pradesh forthwith. The Principal Secretary (Law) and DGP Uttar Pradesh may also file their response by way of an affidavit separately through Registrar (Compliance) on compliance@allahabadhighcourt.in.

12. List this case before the Court on 22.8.2024 as a fresh matter.

13. The Registrar (Compliance) is directed to forward this order to the Secretary, Department of Legal Affairs, Ministry of Law and Justice, Government of India, and the Principal Secretary (Law), Government of Uttar Pradesh, along with a copy to the office of the learned Additional Solicitor General of India, High Court, Allahabad, immediately for ensuring compliance and necessary action.

Order Date :- 6.8.2024

Prajapati

(Justice Vinod Diwakar)