



2025:AHC:226138

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 43194 of 2025

Sheelu And Another

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Rajesh Kumar Bind
Counsel for Respondent(s)	:	C.S.C.

Court No. - 78

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Shri Rajesh Kumar Bind, learned counsel for the petitioners and Sri Ashwani Kumar Tripathi, learned Additional Chief Standing Counsel for the State-respondents.

2. By means of the present writ petition, the petitioners have prayed for a writ in the nature of mandamus directing the respondents not to interfere in their peaceful life and also for a direction to provide protection.

3. It is submitted by learned counsel for the petitioners that both the petitioners are major and living together as husband and wife. It is further submitted that they have apprehension of life threat from the respondent no.4.

4. Per contra, learned Additional Chief Standing Counsel for the State opposed the prayer made by the petitioners and submitted that the act of the petitioners is illegal as petitioner no. 1 was already married to one Dinesh Kumar and has not obtained decree of divorce from the competent court having jurisdiction. It is further submitted that the present controversy is squarely covered with the judgment of a Division Bench of this Court passed in **Writ-C No. 18743 of 2020 (Asha Devi and Another vs. State of U.P. And Others)**, decided on 01.12.2020, **Writ-C No. 7230 of 2024 (Bhagwati Pathwar and Another vs. State of U.P. and Three Others)**, decided on 14.3.2024 and judgment of this Court passed in **Writ-C No. 36027 of 2025 (Smt. Sonam and Another vs. State of U.P. and Three Others)**, decided on 07.11.2025, therefore, the present writ petition is liable to be dismissed.

5. I have heard rival submissions of both the sides.

6. In the relationship of a marriage or in a live-in relationship, there must be two consenting adults human beings. The concept of Gotra, Caste and Religion is left way back. No one has the right to interfere in the personal liberty of the two adults, not even the parents of two adults can interfere in their relationship, but, the Right to Freedom or Right to Personal Liberty is not an absolute or unfettered right, it is qualified by some restrictions also. The freedom of one person extincts where the statutory right of another person starts. A spouse has statutory right to enjoy the company of his or her counterpart and he/she cannot be deprived of that right for the sake of personal liberty and no such protection can be granted to infringe statutory right of the other spouse, hence, the freedom of one person cannot encroach or overweigh the legal right of another person. If the petitioners are already married and have their spouse alive, he/she cannot be legally permitted to enter into live-in relationship with a third person without seeking divorce from the earlier spouse. He/she first has to obtain the decree of divorce from the court of competent jurisdiction before solemnizing marriage or entering into living in a relationship out of their legal marriage.

7. While applying the principles laid down in various pronouncements by Hon'ble the Apex Court, it gives guidelines to the fact that couple must be of legal age to marry and qualified to enter into legal marriage including being unmarried and they must be akin to spouse for significant period of time. There is nothing on record primarily to show that they are living as husband-wife or they have solemnized marriage after obtaining divorce from the earlier marriage. Neither proof of joint account, financial security, joint property or joint expenditure is produced before this Court nor any document is produced before this Court to substantiate that the petitioners are akin to spouse.

8. Following relationship have not been recognized or approved as live-in relationship or relationship in the nature of marriage. This list is not exhaustive but merely illustrative :-

"(a) Concubine can not maintain relationship in the nature of marriage.

(b) Polygamy, that is a relationship or practice of having more than one

wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one's husband or wife, cannot be said to be a relationship in the nature of marriage. Polygamy is also a criminal offence under Sections 494 & 495 I.P.C.

(c) Till a decree of divorce is passed the marriage subsist. Any other marriage during the subsistence of the first marriage would constitute an offence under Section 494 I.P.C. read with Section 17 of the Hindu Marriage Act, 1955 and the person, inspite of his conversion to some other religion would be liable to be prosecuted for the offence of bigamy.

(d) If both the persons are otherwise not qualified to enter into a legal marriage including being unmarried."

9. It is settled law that writ of mandamus can be issued if the petitioner has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. Applying the principles of issuance of writ of mandamus on the facts of the present case, this Court finds that the petitioners have no legal right for protection on the facts of the present case inasmuch as such the protection as being asked, may amount to protection against commission of offence under Section 494/495 I.P.C. It is well settled law that writ of mandamus can not be issued contrary to law or to defeat a statutory provision including penal provision. The petitioners do not have legally protected and judicially enforceable subsisting right to ask for mandamus.

10. Considering rival submissions of the learned counsel for the parties and the Judicial Authorities of this Court cited as above, this Court is not inclined to issue any writ, order or direction in the nature of mandamus for protection to the petitioners who are in a live-in relationship without obtaining decree of divorce from competent court as mentioned above. In such a situation, protection to the petitioners who claim to be in a live-in relationship, cannot be granted in exercise of powers conferred under Article 226 of the Constitution of India as well as in the light of judgment of **Asha Devi (supra)**, **Bhagwati Pathwar (supra)** and **Smt. Sonam**

(supra).

11. Accordingly, writ petition stands **dismissed** with above observations.

December 16, 2025

Nitendra

(Vivek Kumar Singh,J.)