

Before K.Kannan, J.

MANMEET SINGH — *Petitioner*

versus

STATE OF HARYANA AND OTHERS — *Respondents*

CWP No. 26734 of 2014

February 23, 2015

Constitution of India, 1950 — Art.226 — Indian Penal Code, 1860 — Ss. 300, 302 — Honour killing — Formation of Special Investigation Team — Petitioner had an inter-caste marriage — Wife of petitioner was abducted — Petitioner complained to police listing out eleven names as prime suspects — No action had been taken — Lady had been killed — Now a case was registered — Five of eleven persons had been challaned — Police stated that no incriminating materials was available against other 6 persons — Petitioner sought investigation to be put in hands of responsible and senior officer of SSP rank since it was a case of honour killing — Held, that support to inter-caste marriages ought to come at least from law enforcement agencies — To secure a greater sense of purpose and direction to whole investigation, DGP was directed to constitute a Special Investigation Team (SIT) with SSP because initial laxity had yielded loss of a precious life — Public confidence would be better assured if State's investigation was headed by a higher ranking police official.

Held, that an orderly transformation of the society could come only through the instrument of law, for, the law is a potent tool of social engineering and fashions and shapes public opinions. If severe punishment to honour killings has not stopped them, if judicial approaches have not reduced their incidence and police would only stand as mute spectators, if not active collaborators, we will come to a situation of accepting these honour killings as unstoppable, that are at once, shameful and abhorrent. The society ought to understand that all the economic progress and developmental goals of what our policy makers endeavour to secure will be trashed, if we cannot respect an adult's autonomy to choose his or her partner to be together, with or without marriage. A state of evolution as human beings has been gradual and there is no scientific evidence that any race or community is superior to any other. No person could be degraded by place of birth, colour or language or religion.

(Para 8)

Further held, that the march of law operates to recognise the existing practices of what are socially accepted as customary and hence themselves sources of law. Consequently, they obtain statutory approbation by reinforcement of such customs through statutory provisions. The law of succession, guardianship, adoption etc. are some of the customary practices that have been approved through law. All customs, however, have not obtained statutory approvals. We have made deliberate departures whenever we found that the customs came in the way of social advancement. Grant of equal rights to women through amendment in the Hindu Succession Act even in respect of ancestral property, allowing for divorce by mutual consent, for instance, by amending the Hindu Marriage Act and Indian Divorce Act or applying the provisions for adoption for Muslims and Christians by resort to the Juvenile Justice Act are all legislative exercises that have broken new grounds from age old customs that have become putrefied and, therefore, required conscious departures. Several customs still exist in spite of statutory changes. Dowry is a festering problem in spite of bringing a law of dowry prohibition. Here, the law states a course and it is only through the law enforcement machineries that social change could come to arrest this malady. The support to inter-caste marriages, if it is not immediately accepted in the society, ought to come by support at least from the law enforcement agencies who ought to seize the opportunity every time when the situation presents itself. The police must protect immediately couples who are on the run, bound by love, and why, even of infatuation by housing them in protection homes or causing preventive arrests who are likely to cause harm or fending off the khaps from making any unsavory dikhtats. Even executive Magistrates have powers under Criminal Procedure Code to take written assurances of good conduct, who have criminal propensities. The first brush with law for any run away couples is only through the police and here, the police must bear compassionate countenance, ever willing to support their cause and protect them by all means. If the police fails, the result is what this case presents before this court.

(Para 11)

Further held, that to secure a greater sense of purpose and direction to the whole investigation, I direct the Director General of Police to constitute a Special Investigation Team (SIT) with the Senior Superintendent of Police who has a sound record of securing convictions and who has a penchant of thorough investigation, with 2

police personnel to assist him. The said SIT shall examine the petitioner and gather the details of information which he furnishes as regards the involvement of the persons about whom he may have information and the basis for such information. I make this direction not because, no investigation has been done but the initial laxity has yielded to a loss of a precious life and, therefore, the public confidence will be better assured if the State's investigation is headed by a higher ranking police official and that would leave no scope for any local influence to prevail on the police action. The SIT will be constituted by the Director General of Police, Haryana, within a week after the receipt of copy of this order and the SIT will gather details and inform the court of the progress that they have made at the next adjourned date. The State shall also submit its response for the course of action taken, suggestive of course correction and systems reforms to stem the rot of honour killings. If there are already existing instructions either of the Home Department or the police, the same may be submitted to the court through State counsel to fine tune them, if necessary and if already good, evolve ways to implement them.

(Para 12)

Tanu Bedi, Advocate, *for the petitioner.*

Keshav Gupta, Assistant Advocate General, Haryana.

K. KANNAN, J. (Oral)

I. Honour killing-yet another instance

(1) Reply has been filed by the State-respondents in the Registry. The counsel for the petitioner would seek for the investigation to be put in the hands of responsible and senior police officer of the rank of not less than Senior Superintendent of Police, since the case of death was an incident of honour killing for the community that could not tolerate a marriage between the petitioner and his wife, who was later murdered.

II. Action by police so far

(2) After the marriage with the petitioner, his wife was reported to have been taken away from his (petitioner's) company stealthily on 30.09.2014 when he had complained to the police listing out 11 names as prime suspects for causing abduction of his wife from his lawful company. No action has been taken till when the police woke up to the situation that the lady had been killed and dead body had been

recovered on 02.10.2014. A case of death under Section 302 IPC and other related provisions was registered and the reply shows that 5 of 11 persons have been challaned, while the investigation is said to be still progressing and the police is on record to state that they have not collected any incriminating materials against the other 6 persons named in the petitioner's complaint.

III. Husband's plea for SIT for fresh investigation

(3) The petitioner points out that there is simply no response in the whole of the reply filed by the State as to why there was no action taken between 30.09.2014 to 02.10.2014 against anyone of the 11 persons, pursuant to the complaint on 30.09.2014, which if it had been done, would not have resulted in loss of a precious life. The petitioner's counsel argues with passion that the cases of honour killing constitute a different genre, apart from mere offence under Section 302 IPC and the investigation must be entrusted with the high ranking official only to ensure that the investigating machinery is weaned from local influence and the persons of high responsibility carry out the investigation that could evoke public confidence. The counsel for the respondents would respond to these pleas by stating that the investigation has been taken up in right earnest and the Deputy Superintendent of Police is in-charge of the investigation and the police has not closed the case as regards 6 persons against whom allegations have been made by the petitioner. The counsel would also state that the petitioner has furnished no material to substantiate the involvement of other persons.

IV. Court's initial order for protection

(4) On 05.02.2015 when a plea of danger to the life of the petitioner was expressed, after hearing the arguments of the respective counsel, I thought the situation was so serious that the State would require to be sounded a warning that if any untoward incident happened to the petitioner, it would lead to even an inference of serious laches on the part of the State and wanton negligence. The petitioner admits that after the order was passed, appropriate protection has been given but the course of investigation has not much progressed. If reply of the State were any indication that there was a serious approach on the part of the police now and if that seriousness had been exhibited even in a small measure at the appropriate time, when the petitioner had complained of abduction of his wife, it would not have resulted in her death.

V. Law Commission's recommendation to quell honour killing

(5) The grossest dishonour occurring to human beings comes ironically through the expression “honour killings”. The trigger point invariably is the inter-caste marriage of adults or the marriage between persons belonging to a same gotra, perceived as actions against socially accepted norms. The parents themselves become the perpetrators of crimes against their children by succumbing to peer pressure or their own value systems. The decisions of local groups called khaps expecting the parents to disown their children or issuing dikhtats of social ostracisation push the parents and near relatives to the brink and make them inflict inconceivable mayhem and cause serious physical and mental harm to the young couples. The Law Commission, in its 242nd report submitted on 22nd Augusts, 2012, examined whether 'honour killings' must be dealt with differently in the manner of court trials through amended provisions of law and if there was justification for awarding death penalty. This was in the context of a Supreme Court ruling in *Bhagwan Dass versus State (NCT) of Delhi*¹ that 'honour killings' belong to the category of rarest of rare cases and hence capital punishment shall be given. The Law Commission observed that motive behind killing persons would not furnish real justification to introduce a separate provision under Section 300 IPC, although the government had contemplated such a change. Instead, it found that the root cause is invariably the opposition to inter-caste marriages and gotra marriages for the honour killings and there must be a special law that would recognize a different set of principles for quelling the group opposition in the local communities. It, therefore, suggested a new legal framework through a law for Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition). The recommendations have not so far been put through the legislative anvil to secure any new law on the subject.

VI. Requirement of compulsory registration-Registering Officer's negative attitude

(6) Even attempt in the States of Punjab and Haryana to require compulsory registration of marriages was only touted as a method to ensure that even if there are oppositions, parties could legitimize their relationship through marriages and compulsory registration through an easy process. This must have been, under the normal circumstances, provided the much wanted relief to young couples on the run fearing for their lives. Unfortunately, it did not so happen as the experience in our courts would reveal. The Registering Officers just do not register

¹ AIR 2011 SC 1863

marriages. When the couples show up and offer proof that they have been married and also show that they are adults, who are competent to enter into a contract of marriage, the first obstacle comes from the Registering Officer himself who insists that the parents of the spouses shall also appear as witnesses. If the couple is running away from their parents when the latter are the principal aggressors, the insistence of the Registering Officers to secure the presence is really an invitation to thoughtless self-destruction. This court has on several occasions directed the Registering Officers to register marriages without having to compel the couples to secure the presence of parents. I had also directed the judgment in *Bhupiner Singh and another versus State of Punjab and another-CWP No.22586 of 2014, dated 12.01.2015* to be circulated to all the Registering Officers to ensure compliance. Lessons are still not learnt and the Registering Officers see themselves in happy company with the khap panchayats, driven by same sinister motive of applying their own proclivities against the inter-caste matrimonial bondages.

VII. Court's approaches have not stemmed the rot

(7) If the legislation could not help and if even the Registering Officer cannot help, our own judicial approaches through the pronouncements of Punjab & Haryana High Court have also not helped the process. There is no unified attempt to evolve a strategy to put a stop to these serious maladies. In *Amnider Kaur and another versus State of Punjab and others*², this court held that if one of the couples is a minor, having married against the wishes of parents, the court will not extend any protection. In *Kirti Goyal and another versus State of Punjab and others*³, the court reminded the couple, who were on the run, that “co-existence of freedom of the individual and social control are *sine qua non* for the sustainable progress of the society and also the integral part of the constitutional philosophy”. The court counselled that “it is expected from the couple and other young citizens like them that before running away from their homes for performing this type of “rebellion marriages”, they must think twice, besides, listening carefully to their respective parents, who are not their enemies but real well-wishers”. The court was prepared to place a higher respect for social control when it said, “let us welcome the dynamic social change and evolution but only subject to the social control and moral values which are centuries old and have not lost their shine even today.” One

² 2010(1) RCR (Civil) 191

³ 2012(3) RCR (Criminal) 172

might be tempted to ask, if children must listen to the parents, would that be also of objections from the parents to hold archaic values that would perpetuate the caste system? In yet another judgment in *Sandeep Kaur and another versus State of Punjab and others*⁴, this court was anxious that the girl who was prepared to run away in defiance of her parents' wishes along with the man, who had wedded her, is at least a person of means. It, therefore, directed that the boy must show his bona fide and financial stability and secure an undertaking from the boy that he would deposit ₹5 lakhs in the name of wife. The boy failed in the undertaking and the court observed that getting married is a commitment beyond "just sharing popcorns, watching movies and going out for dinner date". The court directed the police to inquire into the character and antecedents of boy and directed appropriate action to be taken in accordance with law and submit report to the court. All these judicial approaches have not helped the cause of the runaway couples or their vulnerability for attack and bodily annihilation through honour killings.

VIII. Inter-caste marriage-a step towards annihilation of caste prejudices. Publication of Caste preferences in matrimonial ads-despicable practice

(8) An orderly transformation of the society could come only through the instrument of law, for, the law is a potent tool of social engineering and fashions and shapes public opinions. If severe punishment to honour killings has not stopped them, if judicial approaches have not reduced their incidence and police would only stand as mute spectators, if not active collaborators, we will come to a situation of accepting these honour killings as unstoppable, that are at once, shameful and abhorrent. The society ought to understand that all the economic progress and developmental goals of what our policy makers endeavour to secure will be trashed, if we cannot respect an adult's autonomy to choose his or her partner to be together, with or without marriage. A state of evolution as human beings has been gradual and there is no scientific evidence that any race or community is superior to any other. No person could be degraded by place of birth, colour or language or religion.

(9) A great social thinker and one of the architects of Indian Constitution Shri B.R. Ambedkar, wrote for an address that he could not make and hence chose to publish through print that,

⁴ 2014(1) RCR (Civil) 1015

“I am convinced that the real remedy (against injustices to dalits) is intermarriage. Fusion of blood can alone create the feeling of being kith and kin, and unless this feeling of kinship, of being kindred, becomes paramount, the separatist feeling-the feeling of being aliens-created by caste will not vanish. Among the Hindus, intermarriage must necessarily be a factor of greater force in social life than it need be in the life of the non-Hindus. Where society is already well knit by other ties, marriage is an ordinary incident of life. But where society is cut asunder, marriage as a binding force becomes a matter of urgent necessity. The real remedy for breaking caste is intermarriage. Nothing else will serve as the solvent of caste.” (Annihilation of Caste by Navayana Publication Private Limited-2014).

It is in the support to inter-caste marriages that we can hope to usher the finest fruits of social transformation. It is a matter of shame that matrimonial columns openly declare higher caste preferences for matrimonial alliances. The publication houses must take principled decision not to allow their columns to be sullied by such a brazen exhibition of caste affiliations, even if it means loss of revenue.

IX. Directives to police & State

(10) There shall be separate cell in every police district for receiving complaints from couples expressing fear of physical annihilation from parents, relatives and khaps. The police shall make no attempt to compel adult couples to return to their parents if any one among the couples apprehends physical harm. The police must keep an army of “friends of people” from amongst progressive minded people in every village or group of villages, where honour killings have been rampant, to provide emotional support and counselling. They shall be sounded by the police, when complaints are received, to play a tempering role to diffuse tension in the village. There is a growing disconnect between police and people. Police must keep live contact with people, not merely to apprehend or arrest but also to promote harmony and good will. Every case suspected to be an instance of honour killing shall be considered for entrustment to a high power officer for investigation not below the rank of a Deputy Superintendent of Police and under the direct control and supervision of the Senior Superintendent of Police. The Secretary, Home Department, Haryana, shall convene forthwith a meeting with all high ranking police officers of the State and evolve an acceptable protocol for the persons who shall

be competent to investigate and prosecute cases of honour killings. The proposed action shall provide a manner of tracking responsibility to a police officer whose laxity has contributed to the honour killing. If age old customs deny to the adults of the freedom of choice as marriage partners, they must be treated as obnoxious and will have no place in the constitutional ethos, allowing for individual freedoms to flourish. If khaps or the parents oppose, they shall be made to bow down to individual preferences that must be taken as mature actions of informed adults. The law enforcement agencies shall be the first persons who shall respond positively to social welfare legislations.

X. March of law-scope for course correction

(11) The march of law operates to recognise the existing practices of what are socially accepted as customary and hence themselves sources of law. Consequently, they obtain statutory approbation by reinforcement of such customs through statutory provisions. The law of succession, guardianship, adoption etc. are some of the customary practices that have been approved through law. All customs, however, have not obtained statutory approvals. We have made deliberate departures whenever we found that the customs came in the way of social advancement. Grant of equal rights to women through amendment in the Hindu Succession Act even in respect of ancestral property, allowing for divorce by mutual consent, for instance, by amending the Hindu Marriage Act and Indian Divorce Act or applying the provisions for adoption for Muslims and Christians by resort to the Juvenile Justice Act are all legislative exercises that have broken new grounds from age old customs that have become putrefied and, therefore, required conscious departures. Several customs still exist in spite of statutory changes. Dowry is a festering problem in spite of bringing a law of dowry prohibition. Here, the law states a course and it is only through the law enforcement machineries that social change could come to arrest this malady. The support to inter-caste marriages, if it is not immediately accepted in the society, ought to come by support at least from the law enforcement agencies who ought to seize the opportunity every time when the situation presents itself. The police must protect immediately couples who are on the run, bound by love, and why, even of infatuation by housing them in protection homes or causing preventive arrests who are likely to cause harm or fending off the khaps from making any unsavory dikhtats. Even executive Magistrates have powers under Criminal Procedure Code to take written assurances of good conduct, who have criminal

propensities. The first brush with law for any run away couples is only through the police and here, the police must bear compassionate countenance, ever willing to support their cause and protect them by all means. If the police fails, the result is what this case presents before this court.

XI. SIT constituted; Police to report progress and of steps taken

(12) To secure a greater sense of purpose and direction to the whole investigation, I direct the Director General of Police to constitute a Special Investigation Team (SIT) with the Senior Superintendent of Police who has a sound record of securing convictions and who has a penchant of thorough investigation, with 2 police personnel to assist him. The said SIT shall examine the petitioner and gather the details of information which he furnishes as regards the involvement of the persons about whom he may have information and the basis for such information. I make this direction not because, no investigation has been done but the initial laxity has yielded to a loss of a precious life and, therefore, the public confidence will be better assured if the State's investigation is headed by a higher ranking police official and that would leave no scope for any local influence to prevail on the police action. The SIT will be constituted by the Director General of Police, Haryana, within a week after the receipt of copy of this order and the SIT will gather details and inform the court of the progress that they have made at the next adjourned date. The State shall also submit its response for the course of action taken, suggestive of course correction and systems reforms to stem the rot of honour killings. If there are already existing instructions either of the Home Department or the police, the same may be submitted to the court through State counsel to fine tune them, if necessary and if already good, evolve ways to implement them.

(13) The writ petition stands disposed of with the above Directions.

(14) Call on 07.04.2015 for submission of report.

M.Jain