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V. CHITAMBARESH & K.P.JYOTHINDRANATH, JJ.

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Judgment

Chitambaresh, J.

1.This writ petition has been filed to produce the body of the detenue - Rifana Riyad - aged 19 years by her father under Article 226 of the Constitution of India by the issue of a writ of habeas corpus or other appropriate writ. The allegation is that the detenue is under the illegal custody of the fourth respondent by name Hanize aged 18 years and that she should be set at liberty at once. The detenue and the fourth respondent appeared before us on receipt of notice in the writ petition and submitted that they are intensely in love with each other since school days. The dates of birth of the detenue and the fourth respondent are 20.9.1998 and

24.2.2000 respectively and therefore both of them have become major as on date.

2.There were proceedings earlier too on the file of the Court of

the Judicial First Class Magistrate of Alappuzha on complaint filed by the petitioner when the detenue was taken away from his home by the fourth respondent. The detenue walked out of her parental home again to go with the fourth respondent despite her custody being granted to the petitioner by an interim order in this writ petition. It now transpires that the detenue and the fourth respondent are having a live-in relationship practically living as husband and wife though not legally wedded. The petitioner adds that he is willing to let go the detenue with the fourth respondent after a legal and valid marriage and not before under a live-in relationship. The short question that arises for consideration now is as to whether the daughter of the petitioner has been illegally detained by the fourth respondent warranting interdiction by this Court.

3.The petitioner submits that the fourth respondent has not completed 21 years of age and hence a 'child' as defined

under Section 2(a) of the Prohibition of Child Marriage Act, 2006 ('the Act' for short). The petitioner asserts that there can be no valid marriage between the detenue and the fourth respondent and any offspring born to them can only be an illegitimate child in the eye of law. We however notice that the detenue has attained puberty and has the capacity to marry both under Section 251 of Mahomedan Law as well as the provisions of the Act. But the marriage of the fourth respondent who has not completed 21 years of age is voidable at his instance under Section 3 of the Act on the ground that he was a 'child' at the time of marriage.

4.It transpires that the detenue is living with the fourth respondent out of her own volition and she being a major has a right to live wherever she wants to as is permissible or to move as per her choice. The detenue has every right to live with the fourth respondent even outside her wedlock

since live-in relationship has been statutorily recognized by

the Legislature itself. The Supreme Court in Nandakumar v. State of Kerala [2018 (2) KLT 783(SC)] had occasion to observe as follows:

> "For our purposes, it is sufficient to note that both appellant No.1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that 'live-in relationship' is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005."

5. The Supreme Court in the aforesaid decision quoted with approval the following passage from Shafin Jahan v. Asokan K.M. and others [2018 (2) KLT 571(SC)] popularly known as

Hadiya's case:

> "It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/He is entitled to make her/his choice. The courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation."

The dictum in Beljibhai Bhanabhai Prajapati v. State of Gujarat and others (AIR 2016 Guj 170) that the Act has a bearing on deciding the custody of the detenue is therefore no longer good law.

6.We cannot close our eyes to the fact that live-in relationship has become rampant in our society and such living partners cannot be separated by the issue of a writ of habeas corpus provided they are major. The Constitutional Court is bound to respect the unfettered right of a major to have live-in relationship even though the same may not be palatable to the orthodox section of the society. We are therefore constrained to dismiss this writ petition declaring that the detenue is free to live with the fourth respondent or marry him later on his attaining the marriageable age.

The writ petition is dismissed. No costs.

V. CHITAMBARESH, JUDGE

K.P.JYOTHINDRANATH, JUDGE

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