

Smt. Noor Jahan Begum @ Anjali Mishra & ... vs State Of U.P. & 4 Others on 16 December, 2014

Author: Surya Prakash Kesarwani

Bench: Surya Prakash Kesarwani

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Judgement Delivered on 16.12.2014

Court No. - 1

(1) Case :- WRIT - C No. - 57068 of 2014

Petitioner :- Smt. Noor Jahan Begum @ Anjali Mishra & Another

Respondent :- State Of U.P. & 4 Others

Counsel for Petitioner :- M.S. Ansari

Counsel for Respondent :- C.S.C.

Judgment Reserved on 31.10.2014

(2)Case :- WRIT - C No. - 58129 of 2014

Petitioner :- Smt. Afsana @ Kiran And Another

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- R.P. Srivastava

Counsel for Respondent :- C.S.C.

Judgment Reserved on 3.11.2014

(3)Case :- WRIT - C No. - 58910 of 2014

Petitioner :- Sony @ Sabia & Another

Respondent :- State Of U.P. & 4 Others

Counsel for Petitioner :- Dinesh Raghav, Abhijit Mishra

Counsel for Respondent :- C.S.C.

Judgment reserved on 10.11.2014

(4)Case :- WRIT - C No. - 60499 of 2014

Petitioner :- Smt. Ayaish Begum @ Aneeta Vishwakarma & Another

Respondent :- State Of U.P. & 4 Others

Counsel for Petitioner :- Bed Kant Mishra

Counsel for Respondent :- C.S.C.

Judgment reserved on 20.11.2014

(5)Case :- WRIT - C No. - 62587 of 2014

Petitioner :- Smt. Sonam Begum @ Priyanka & Another

Respondent :- State Of U.P. & 3 Others

Counsel for Petitioner :- R.K. Shukla, Ajay Kumar

Counsel for Respondent :- C.S.C.

Judgment reserved on 21.11.2014

Hon'ble Surya Prakash Kesarwani, J.

1. Heard Sri M.S. Ansari, learned counsel for the petitioners in WRIT - C No. - 57068 of 2014, Sri R.P. Srivastava in WRIT-C No.-58129 of 2014, Sri Abhijit Mishra in WRIT-C No.-58910 of 2014, Sri Bed Kant Mishra in WRIT-C No.-60499 of 2014 and Sri R.K. Shukla in WRIT-C No.-62587 of 2014 and Sri Siddharth Singh Shreenet, learned Standing Counsel for the State-Respondent.

2. All these writ petitions have been filed praying for protection as married couple on the allegation that petition No.2 in each of the writ petitions performed Nikah with the petitioner No.1 girl after

getting her religion converted from 'Hindu' to 'Islam'. In all these writ petitions the petitioner girl has voluntarily offered for recording their statement before this Court and, as such statements on oath of both the petitioners in each of the above noted writ petitions were recorded in open court and in presence of learned counsel for the parties. Since similar controversy is involved in these writ petitions and similar submissions have been made by learned counsels for the petitioners and the learned standing counsel and as such I proceed to decide these writ petitions together, with due discussions of facts of each writ petition.

SUBMISSIONS OF PARTIES

3.Learned counsels for the petitioners submit that petitioners of each writ petitions are major and their marriage is evidenced by Nikahnama and as such they are entitled for the relief as prayed in the writ petitions.

4. The basic submission of learned counsel for the state-respondents is that since conversion and Nikah both are doubtful and in any circumstances religion of petitioner girls has been converted under the dictate of petitioner No.2 boys only for the purposes of alleged Nikah and, as such, there was neither any valid religion conversion nor valid Nikah. Therefore, petitioners are not entitled to protection as married couple. He submits that religion conversion from Hindu to Islam merely for marriage and that too at the instance of Petitioner No.2 boy in each of the writ petitions, is not permissible even as per Muslim Law. He further submits that writ petitions are based on suppression of facts and misleading averments and, therefore, the writ petitions deserve to be dismissed on this ground alone.

5.Learned counsels for the petitioners do not dispute the facts that the petitioner No.2 boy has got converted the religion of petitioner No.1 girl of each of the writ petitions to marry with her. They also do not dispute the contents of the statements made by each of the petitioners before this Court but they submit that since Nikahnama has been filed with the writ petition, therefore, they are entitled for protection as married couple.

DISCUSSIONS & FINDINGS

6. I have carefully considered the submissions of learned counsels for the parties.

7. Before I proceed to discuss the legal position, it would be appropriate to discuss briefly the facts of each cases and the statements made by the petitioners.

8. Facts of Writ C No.-58129 of 2014 are as follows:

(i)This writ petition has been filed accompanied by affidavit of petitioner No.2 in which he has stated by personal knowledge that both the petitioners are major and have solemnized their marriage on 20.10.2014 at Allahabad. It has not been stated that the petitioner No.2 girl has renounced her Hindu religion and embraced Islam and also married with the petitioner No.2 by her own freewill. In their voluntary

statement on oath before this Court, the petitioners have stated as under:

Statement of Petitioner No.1 (girl) ^ ^ l'kiFk c;ku fd;k fd esjk uke fdju iq=h t;a=h izlkn fuoklh taxyhiqj Fkkuk Hkkokuhxat ftyk fl)kFkZuxjA ;kph lao 1 us le{k U;k;ky; l'kiFk c;ku fd;k fd vkt fnukWd 3&11&14 dks fuEufyf[kr c;ku ns jgh gwWA esjs firk th dk uke t;a=h izlkn gS eSa taxyhiqj ftyk fl)kFkZuxj dh jgus okyh gwWA eSa b.Vj ehfM,V rd i<+h gwWA eSa bykgkckn fnukWd 20 vDVwcj lu~ 2014 dks 5 cts lk;adky vkbZ FkhA eSa bykgkckn vdsyh vkbZ FkhA esjk fudkg ukS cts fnu esa bykgkckn esa vCnqy jghe us ccyw mQZ bjQku ds lkFk djf fn;k A ;g fudkg vdcj iqj ftyk bykgkckn esa djf;k x;k Fkka esjk /keZ ifjorZu vCnqy jghe fuo vdcjiqj ftyk bykgkckn esa djf;k x;k Fkka ;g /keZ ifjorZu mUgksaus 'kknh djus ds fy, djf;k Fkka ;g /keZ ifjorZu mUgksaus ccyw mQZ bjQku tks fd ;kph la[k nks gS ds dgus ij djf;k Fkka /keZ ifjorZu izek.k i= tks fd bl ;kfpdk dk layXud rhu gS eq>s vCnqy jghe us vdcjiqj bykgkckn esa fn;k Fkka bl dkxt ds fo"i; esa eSa dqN ugha tkurh gwWA bLyke ds ckjs esa eSa dqN ugha tkurh gwWA dfFkr fudkgukek tks ;kfpdk dk layXud pkj gS esa fudkg dk LFkku unZ gkbZdksVZ bykgkckn vFkkZr~ gkbZdksVZ ds djhc fy[kk gqvk gSA ;gkW esjk fudkg ugha gqvkA C;ku i<+ o lqudj rLnhd fd;k^ ^ Statement of petitioner No.2 ^ ^ l'kiFk c;ku fd;k fd esjk uke ccyw mQZ bjQku iq= Jh ;qlwQ vyh [kku fuoklh taxyhiqj Fkkuk Hkkokuhxat ftyk fl)kFkZuxj gS] eSa ;kph lao 2 gwW le{k U;k;ky; esa l'kiFk iwoZd fuEufyf[kr c;ku djrk gwWA& eSa fdju dks fnukWd 20 vDVwcj 2014 dks izkr% 7 cts bykgkckn yk;k Fkka eSus budk /keZ ifjorZu vdcjiqj bykgkckn esa 'kknh djus ds fy, vCnqy jghe dh enn ls ukS cts fnu esa djof;k Fkka vCnqy jghe vdcjiqj bykgkckn efltn esa ekSyoh gSA eSus viuk fudkg vdcjiqj esa djf;k Fkka esjs f[kykQ dksbZ jiV ugha fy[kh xbZ gSA esjk fudkg ukS cts gqvk Fkka eq>s ;g ugha ekywe gS fd fudkgukek esa dkth dk uke djhe vgen fy[kk gqvk gSA eSa eqEcbZ esa IyLVj vkQ isfj dk etnwjh ij dke djrk gwWA esjk eqEcbZ dk irk nzkoh LVs'ku ds ikl ikbi ykbu xyh uao 31 gSA C;ku i<+ o lqudj rLnhd fd;k^ ^

(ii) In her voluntary statement on oath the petitioner No.1 girl has stated that the petitioner No.2 got converted her religion which he did to marry with her. Petitioner No.1 also stated that her religion was converted by one Sri Abdul Rahim on the instructions of petitioner No.2 and he gave her conversion certificate of acceptance of Islam at Akbarpur, Allahabad which has been filed as Annexure No.3 and about which she does not know anything. She stated that she knows nothing about Islam. She also stated that in the Nikahnama filed as Annexure No.4 the place of Nikah is mentioned as near High Court where nikah did not take place. During her statement she named her as "Kiran" and also put her signature as "Kiran". She has not used even the alleged Muslim name allegedly given to her. She also stated that she was brought to Allahabad on 20th October, 2014 at 5 p.m. while alleged conversion and Nikah took place at 9 A.M. Which is not possible.

(iii) In his voluntary statement on oath on 3rd November, 2014 the petitioner No.2 accepted that he brought Kiran (petitioner No.1) on 20th October, 2014 at about 7 A.m. and with the help of one Sri Abdul Raheem he got her religion converted for the

purposes of Nikah. He stated that Abdul Raheem is a maulvi in a mosque situated at Akbarpur, Allahabad. He further stated that Nikah and conversion took place at about 9 A.M. On 20th October, 2014. He expressed his total unawareness about the name of Qazi written in the alleged nikahanama.

9. From the aforementioned facts and statements on oath voluntary given by the petitioners, it is clear that the story of religion conversion of petitioner No.1 is wholly unreliable inasmuch as according to petitioner No.1 she alone came to Allahabad at about 5 P.M. on 20th October, 2014 whereas according to petitioner No.2 he brought her at Allahabad on 20th October, 2014 at about 7 A.M. and got her religion converted and also performed Nikah with her at about 9 A.M. on the same day. Besides this the conversion also appears to be manipulated which fact is evident from bare reading of the statements of the petitioners.

10. In any circumstances the religion of the petitioner No.1 was converted under the dictates of petitioner No.2 and merely for the purposes of Nikah and without any knowledge of Islam or her faith in Islam.

11. A person cannot be said to have accepted Islam unless he knows the basics of Islam. There are serious contradictions between the pleadings made in the writ petition, the alleged papers filed along with the writ petition and the statements on oath of the petitioners recorded on 3rd November, 2014.

12. Under the circumstances no relief can be granted to the petitioners inasmuch as the writ petition itself has been filed suppressing the material facts with regard to the alleged conversion and Nikah.

13. It is settled law that a person who invokes jurisdiction under Article 226 of the Constitution of India should approach the Court with clean hands, clean mind and clean heart. Petitioners have not done so. The writ petition is based on false averments, suppression of facts and misrepresentation, and therefore it deserves to be dismissed.

14. In the case of Vice Chairman, Kendriya Vidyalaya Sangathan and Another Vs. Girdhari Lal Yadav, 2004 (6) SCC 325, Hon'ble Supreme Court considered the applicability of principles of natural justice in cases involving fraud and held in paragraph 12 and 13 as under :

"12. Furthermore, the respondent herein has been found guilty of an act of fraud. In opinion, no further opportunity of hearing is necessary to be afforded to him. It is not necessary to dwell into the matter any further as recently in the case of Ram chandra Singh v. Savitri devi this Court has noticed :

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.

It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad."

19. In *Derry V. Peek* (1889) 14 AC 337 it was held: "In an action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false.

A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person make it liable to an action of deceit."

15. In the case of *Ram Chandra Singh Vs. Savitri Devi and others*, 2003(8) SCC 319, Hon'ble Supreme Court held in paragraphs 15, 16, 17, 18, 25 and 37 as under :

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.

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25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res-judicata*.

37. It will bear repetition to state that any order obtained by practising fraud on court is also non-est in the eyes of law."

16. In the case of S.P. ChengalVaraya Naidu (dead) by L.Rs Vs. Jagannath (dead) by L.Rs and others, AIR 1994 SC 853, the Hon'ble Supreme Court held in para 7 as under :

"7. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

17. In the case of Jainendra Singh Vs. State of U.P., 2012 (8) SCC 748, Hon'ble Supreme Court considered the fact of appointment obtained by fraud and held in para 29.1 to 29.10 as under :

"29.1 Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppel against the employer.

29.2 Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

29.3 When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppel against the employer while resorting to termination without holding any inquiry.

29.4 A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to

terminate his services.

29.5 Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

29.6 The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

29.7 The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

29.8 An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

29.9 An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

29.10 The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable."

18. In view of the above discussions this writ petition deserves to be dismissed.

19. Facts of Writ C No.-62587 of 2014 are as follows:

(i) This writ petition has been filed praying that a writ, order or direction in the nature of mandamus be issued directing the respondents not to harass/humiliate the petitioners and his family members.

(ii) In paragraph No.5 of the writ petition the petitioners have stated as under:

"5. That petitioner No.1 has marriage with the petitioner No.2 on 14.11.2014 according to Hindu Muslim Reeti Riwaaj at District Buland Shahar. For kind perusal

A typed/photo copy of Nikahanama/Marriage Certificate of the petitioners dated 14.11.14 is being filed herewith and marked as Annexure No.1 to this writ petition."

(iii) In paragraph No.6 it is stated that the religion of petitioner no.1 was converted from Hindu to Muslim on 13.11.2014 and now the name of petitioner No.1 is Smt. Sonam Begum in place of Priyanka Kumari. It has been alleged that both the petitioners are major.

(iv) In her voluntary statement on oath on 21.11.2014 before this Court, the petitioner No.1 has stated as under:

Statement of Petitioner No.1 (Girl):-

^ ^;kph lao 1 lksue mQZ fiz;adk us le{k U;k;ky; l'kiFk c;ku fd;k fd vkt fnukWd 21&11&14 dks fuEufyf[kr c;ku ns jgh gwWA esjk uke lksue mQZ fiz;adk gSA esjs firk th dk uke Hkxoku flag gSA og ,d d ``kd gSA og uxyk yks/kbZ xkao es [ksrh djrs gSA esjk fudkg dc gqvk] eq>s ;kn ugh gSA ;kph la[;k 2] lksuw eq>s lkFk ysdj x;s Fks vkSj fdlh gkfQt ls esjk /keZ ifjorZu dj;k;k Fkka eq>s ;kn ugh gS fd lksuw us esjk /keZ ifjorZu dc dj;k;k mUgksaus eq>ls fudkg djus ds fy;s esjk /keZ ifjorZu dj;k;k lksuw us tc eq>ls fudkg fd;k] ml le; esjs lkFk tks vU; O;fDr mifLFkr Fks] mUgs eSa ugh tkurhA^ ^

(v) In his voluntary statement on oath before this Court on 21.11.2014, the petitioner No.2 has stated as under:

Statement of Petition No.2 (boy):

^ ^;kph lao 2 lksuw us le{k U;k;ky; l'kiFk c;ku fd;k fd vkt fnukWd 21&11&14 dks fuEufyf[kr c;ku fn;kA esjk uke lksuw gSA esjs firk th dk uke eqWa'kh [kku gSA eS xzke uxyk yks/kbZ] Fkkuk fncbZ] rglhy vuwi'kgj ftyk cqyUn'kgj dk jgus okyk gwWA eS ukbZ dk dke djrk gWwA esjh ukbZ dh nqdku cqyUn'kgj ds HkwM esa gSA eS djhc 7&8 gtlj ;i;k eghuk dek yrsrk gwWA eSus fiz;adk dk /keZ ifjorZu fnukad 14 ;k 15 uoEcj 2014 dks dj;k;k Fkka lksue mQZ fiz;adk dk /keZ ifjorZu eSus 'kknh djus ds fy, dj;k;k Fkka buls eSus fudkg fnukad 14@15 uoEcj 2014 dks dj fy;kA fudkg es eSus esgj dh jkf'k :o 5000@& j[kh Fkha fudkg ds le; esjs HkkbZ vkSj pkpk mifLFkr FksA^ ^

(vi) Petitioner No.1 stated that she do not remember when religion conversion and Nikah took place. She stated that petitioner No.2 bought her to one Sri Hafiz and got converted her religion and she does not remember that when her religion was converted. She stated that her religion was got converted by the Petitioner No.2 only for the purpose of Nikah. Petitioner No.2 has stated that he got converted the religion of petitioner No.1 on 14 or 15th November, 2014 to marry with her and the marriage was solemnized on 14/15th November, 2014 in presence of his brother and uncle. Thus, the religion conversion of petitioner No.1 does not appear to be voluntary as the religion was got converted by the petitioner No.2 and that too merely for the

purposes of Nikah. The petitioner No.1 has stated that she does not remember when her religion was converted or when Nikah took place while the petitioner No.2 stated that it was done on 14 or 15th November, 2014. In paragraph No.5 of the writ petition it has been alleged that the conversion took place on 13th November, 2014 and Nikah took place on 14th November, 2014 as per Hindu Muslim Reet Riwaz. In the alleged Nikahanama filed as Annexure No.1 there is no whisper that Nikah took place as per Hindu Muslim Customs.

(vii) Thus, the averments made in the writ petition appears to be false and misleading in view of the alleged Nikahanama and the voluntary statement on oath given by the petitioners on 21st November, 2014 before this Court, which disentitle them for any relief under Article 226. The principles laid down by Hon'ble Supreme Court on these aspects have already been mentioned in paragraph No. 12 to 15 above.

20. In view of the above discussions this writ petition also deserves to be dismissed.

21. The facts of Writ-C No. 60499 of 2014 are as under:

(i) This writ petition has been filed praying for a writ order or direction in the nature of mandamus to the respondents not to disturb peaceful married life of the petitioners.

(ii) It is alleged that the religion of petitioner No.1 girl who is allegedly about 19 years old was converted on 27.10.2014 as per Sanad Qubooliyat Islam allegedly issued by Sri Mohd. Sayyed Alam Madarsa Islamia Faizul Uloom, Kuparganj Kanpur Nagar, a copy of which has been filed as Annexure-4 to the writ petition. It is alleged in paragraph No.2 of the writ petition that marriage was solemnized as per muslim customs on 7.11.2014 in presence of Kaji at Kanpur Nagar. Petitioner No.1 is shown to be resident of village Atursai, P.S. Kunda, Tehsil Kunda, District Pratapgarh while petitioner No.2 has disclosed himself to be resident of Kanpur Nagar. In the writ petition it has not been disclosed that where the alleged Nikah took place at Kanpur Nagar.

(iii) On 13.11.2014 both the petitioners offered to record their statements and their statements were recorded in open court in presence of learned counsel for the parties, which are reproduced below:

Statement of Petition No.1 (Girl):

;kph lao&1 us le{k U;k;ky; l'kiFk c;ku fd;k fd vkt fnukWd 13&11&14 dks fuEufyf[kr c;ku ns jgh gwWA esjk uke vk;lk csxe mQZ vuhkr fo'odekZ esjs firk th dk uke Jh f'ko lju yky gSA oks dq.Mk izrkix< esa jgrs gSaA eSa cho,o rd i<+h gwWA esjk /keZ ifjorZu ekso lyhe us djok;k Fkk A ;s /keZ ifjorZu Jh lyeku ds lkFk 'kknh djokus ds fy, djok;k FkkA esjk fudkg lyeku us dpgjh] esa djok;k A fudkg esa D;k gqv k eq>s ekywe

ugha A eq>s bLyke ds ckjs esa irk ugha gSA Statement of Petitioner No.2 (boy) ^ ^;kph lao&2 us le{k U;k;ky; l'kiFk c;ku fd;k fd vkt fnukWd 13&11&14 dks fuEufyf[kr c;ku ns jgk gwWA esjk uke lyeku iq= tCckn gq[Su] fuoklh eoa uao 83@209 twgh [kqnZ ijeiqjok dkuiqj gSA vuhkr us fudkg ds fy;s /keZ ifjorZu dj;k;k FkkA ;g /keZ ifjorZu esjs] esjs HkkbZ o odhy lkge o ekSykuk lkge dh mifLFkfr esa gqv k Fkk ;g fdl rkjh[k dks gqv eq>s ugha ekyweA eSaus vuhkr ls /keZ ifjorZu ds ckn fudkg dj fy;kA esjh tUefrFk 13&3&1991 gSA fudkgukesha esa esgj dh jkf'k 21000@&:o fy[kh x;h gSA ;kfpdk ds layXu 1 us lun fudkgukek fgUnh VzkuUlys'ku dks i<+dj dgk fd ;g :o 38216 esgj dh jkf'ky fcuk esjh lgefz ds fy[kh x;h gSA mnwZ esa fy[ks dffkr fudkgukek tks ;kfpdk lao&1 gS dks ns[kdj dgk fd fudkgukesha esa esgj dh jkf'k ugha fy[kh gS rks Hkh ;g ekQ dh tk ldrh gSA esjk oksVj vkbZomho dkMZ tks fnukWd 19&4&2014 dks cuk gS esa esjh tUefrFk 13 ekpZ 1989 gSA ^ ^

(iv) Petitioner No.1 has stated that her religion was got converted by the petitioner No.2 for marriage. This position has also been admitted by the petitioner No.2 in his statement. The petitioner No.1 has shown her total unawareness that what happened in the alleged Nikah. She stated that petitioner No.2 did nikah in Kachehari. The petitioner No.2 although stated that he got the religion of petitioner No.1 converted in presence of his brother, counsel and Maulana but he did not know the date on which he got her religion converted.

(v) Perusal of the voluntary statement given on oath by the petitioners in the open Court in presence of learned counsel for the parties clearly shows that the averments made in the writ petition with regard to conversion and Nikah are based on suppression of facts and are misleading. The petitioner No.1 has not stated that she renounced Hindu religion or embraced Islam of her own freewill. Instead she stated that she does not know about Islam.

(vi) The petitioners have not approached this Court with clean hands, clean mind and clean heart.

22. On these facts it is evident that the writ petition is based on suppression of material facts and misleading averments and therefore it deserves to be dismissed.

23. The facts of Writ C No. 57068 of 2014 are as under:

(i) This writ petition has been filed for the following relief:

"(a) Issue a writ, order or direction in the nature of mandamus commanding the respondents not to harass and torture the petitioners by any mode or manner and also not to interfere in their peaceful matrimonial life.

(b) Issue any other and further writ, order or direction in favour of petitioners which this Hon'ble Court may deem fit and proper and for which they are legally and

lawfully entitled.

(c) Award cost of petition in favour of the petitioners.

(ii) It is stated in paragraph Nos. 4 and 5 of the writ petition that petitioner No.1 is above 18 years old and has passed intermediate examination. It is stated in paragraph Nos. 6 and 7 that the petitioner No.2 is illiterate and he is aged about 24 years.

(iii) It is stated in paragraph 11 of the writ petition that on 23rd September, 2014 petitioner No.1 who is resident of district Deoria appeared before Maulvi Niyaz Ahmad of Madrasa Mirquatul Uloom, Mau Nath Bhanjan, District Mau and embraced Islam. It is stated in paragraph No.13 of the writ petition that thereafter Nikah was solemnized on 24th September, 2014 at Mau.

(iv) In her voluntary statement on oath on 31.10.2014 before this Court, the petitioner No.1 has stated as under:

^^uwjtgkW csxe mQZ vatyh feJk ,oa ,d vU; cuke LVsV vkQ ;woiho ,oa vU; ;kph lao 1 vatyh feJk le{k U;k;ky; l'kiFk c;ku fd;k & Jh vf[kys'k feJk esjs ikik dk uke gSA ;g nsfj;k esa jgrs gSA eSa bUgha ds lkFk jgrh FkhA eSa b.Vj rd i<+h gqbZ gwWA eSa bLyke /keZ ds ckjs esa dqN ugha tkurh gwWA fno 23 flrEcj 2014 dks esjk /keZ ifjorZu ekso lyhe ;kph lao 2 ds ?kj ij dj;k;k x;k FkkaA tc ;g /keZ ifjorZu dj;k;k x;k rc eSa vyx dejs esa cSBh Fkh vkSj ckjg ekSyoh futke vgen cSBs Fks mlh le; fudkg gks x;k Fkk ekSyoh lkgc us dj;k;k FkkaA Jh ekso lyhe lkM+h dk C;kikj djrs gSAa 'kknh djus ds fy, ;g /keZ ifjorZu gqvk FkkaA^^

(v) In his voluntary statement on oath on 31.10.2014 before this Court, the petitioner No.2 has stated as under:

^^esjk uke ekso lyhe gSA esjs firk dk uke fjtoku vgen gSA eSa em ftys dk jgus okyk gwWA eSa lkM+h dk C;kikj djrk gwWA eSa vkB eghus ls vatyh feJk dks tkurk gwWA og 5 flrEcj 2014 dks em vkbZ FkhA budk /keZ ifjorZu o fudkg eSaus vius ?kj esa gh dj;k;k FkkaA ml le; esjs ?kj ifjokj ds yksx FksA budk /keZ ifjorZu o fudkg eSaus igyh ckj 10 flrEcj dks ,oa nwljh ckj 23 flrEcj lu 2014 dks dj;k;k FkkaA O;kikj ls esjh vkenuh yxHkx 15&20 gTkj :o izfrekg gSA eSa i<+k fy[kk ugh gwWA^^

(vi) It is relevant to note that earlier the petitioners have filed a Writ C No. 51086 of 2014 which was dismissed on 22nd September, 2014 in the absence of any cogent proof of religion conversion of petitioner No.1. The order dated 22.9.2014 passed in writ C No. 51086 of 2014 is reproduced below:

"Heard learned counsel for the petitioners, learned Standing Counsel and perused the record.

The petitioners have preferred this writ petition for a direction upon the respondents not to harass or interfere in the marital life of the petitioner nos. 1 and 2.

From perusal of the record, it transpires that no cogent proof has been filed by the learned counsel for the petitioners with regard to conversion of the Petitioner No. 1 into Muslim religion according to the procedure provided in Mohammedan Law.

In view of the above, I do not see any justification to interfere in the matter. The writ petition is, accordingly, dismissed at this stage."

(vii) Thus there was no cogent proof of religion conversion of Petitioner No.1 as on 22nd September, 2014 when the above noted writ petition was dismissed which was filed for the relief that the respondents be directed not to harass and interfere in the married life of the petitioners. Thus the aforesaid writ petition was filed by the petitioners alleging themselves to be married couple.

(viii) Now the present writ petition has been filed alleging that the religion of the petitioner No.1 was converted on 23rd September, 2014 and Nikah was solemnized on 24th September, 2014. In his voluntary statement on oath the petitioner No.2 stated before this Court on 31st October, 2014 that he knows the petitioner No.1 since last 8 months and he got her religion converted at his home in presence of his family members and also married with her firstly on 10th September, 2014 and secondly on 23rd September, 2014. The statements so given and the averments made in the writ petition as well as the earlier writ petition No. 51086 of 2014 are self contradictory. As per allegation made in Writ Petition No. 51086 of 2014 the alleged conversion took place on 8th September, 2014 and the alleged Nikah took place on 12th September, 2014 while as per the averments made in this writ petition the conversion and Nikah took place on 22nd September, 2014 and 24th September, 2014 respectively. While as per voluntary statement on oath given by the petitioner No.2 on 31st October, 2014 he got converted the religion of petitioner No.1 in presence of his family members on 10th September, 2014 for the first time and on 23rd September, 2014 for the second time and also solemnized Nikah with her twice i.e. on 10th September, 2014 and on 23rd September, 2014.

(ix) In her voluntary statement on 31st October, 2014 petitioner No.1 has stated that she does not know anything about Islam and her religion was got converted by the petitioner No.2 at his residence to marry with her. The aforementioned facts and circumstances clearly indicate that the writ petition has been filed suppressing material facts of the case and making misleading averments.

(x) On 29th October, 2014 this Court passed an order directing the petitioners to file their personal affidavit explaining the contradictions between the averments made in the earlier writ petition and the present writ petition. Petitioners filed a joint affidavit dated 31st October, 2014 in which it is stated that the first Nikah held on 10th September, 2014 was discarded by this Court and, as such, the petitioner No.1 embraced Islam on 23rd September, 2014 and second Nikah was performed on 24th September, 2014. Perusal of the order dated 22.9.2014 passed in Writ Petition No. 51086 of 2014 as reproduced above shows that the writ petition was dismissed in the absence of any cogent proof of conversion of the petitioner No.1 into Muslim religion.

(xi) As per own voluntary statement on oath by petitioner No.2 he got the religion of petitioner No.1 converted at his home at Mau in presence of his family members. In her voluntary statement on oath on 31st October, 2014 before this Court the petitioner No.1 stated that she knows nothing about Islam. She also stated that her religion was got converted by the petitioner No.2 at his home on 23rd September, 2014 and Nikah was performed by him through Maulvi. The religion was converted merely for marriage. The aforesaid position stated by the petitioner No.1 was not disputed by petitioner No.2.

(xii) The totality of the facts and circumstances of the case, as noted above, clearly shows suppression of material facts and making false and misleading averments in the writ petition as aforesaid.

(xiii) In view of these facts the writ petition deserves to be dismissed.

24. The facts of writ petition No. 58910 of 2014 are as under.

(i) This writ petition has been filed praying for a writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the peaceful living and enjoying married life by the petitioners.

(ii) It is stated in the writ petition that the petitioner No.1 girl is aged about 24 years as per high school examination certificate. No birth certificate of petitioner No.2 has been filed.

(iii) In paragraph No.8 of the writ petition the petitioners have stated that petitioner No.1 is the married wife of the petitioner no.2 and the marriage of the petitioner no.1 with petitioner 2 has taken place on 1.8.2014.

(iv) In paragraph No.12 of the writ petition the petitioners have stated that urgency of the matter in summer vacation is that the local police in connivance of the father of the petitioner No.1 is harassing the petitioners and the petitioners made a representation before the Respondent No.2 about harassment caused to them but nothing was done till date.

(v) In paragraph No.17 of the writ petition the petitioners have stated that petitioner No.2 is aged about 23 years and he was married more than two months before the date of filing of writ petition with petitioner 1 and he is industrial labour and his monthly income is Rs. 7,000.

(vi) In her voluntary statement on oath on 7.11.2014 before this Court, the petitioner No.1 has stated as under:

^^esjk uke lksuh mQZ lkfc;k] iRuh lxhj vgen gSA esjs firk dk uke jes'k pUnz gSA eSa bl ;kfpdk esa ;kfpuh lao 1 gwWA eSa 217 lEHky xsV pankSlh ftyk lEHky dh jgus okyh gwWA eS l'kiFk c;ku djrh gwW fd& esjs firk th esaFkk QSDVzh esa ukSdjh djrs gSaA eSa Lukrd dh Nk=k gwWA eSa bLyke /keZ ds ckjs esa ugha tkurh gwWA eq>s 'kknh ds fy, bLyke /keZ dqcqy djok;k x;kA eq>s lxhj vgen ;kph lao 2 ds mifLFkfr esa bLyke

/keZ dqcqy djok;k x;kA ;g dqewyukek 15 tqykbZ 2014 dks gqvka lxhj vgen th us esjs lkFk fudkg 1 vxLr 2014 dks fdLh dkth ls djok;kA mUgksaus ;g fudkg ekSgEen gqLSu ds ?kj ij djok;kA eq>s ugha ekywe fd fudkgukek tks ;kfpdk layXud lao 2 gS ds vuqlkj fudkg 10 vxLr 2014 dks djok;k x;k A lxhj vgen 'kh'ks dk dke etnwjh ij djrs gSaA^^

(vii) In his voluntary statement on oath on 7.11.2014 before this Court, the petitioner No.2 has stated as under:

^^esjk uke &lxhj vgen gS] esjs firK th dk uke vCnqy gQht gSA eSa bl ;kfpdk esa ;kph lao 2 gwWA eSa cho,o vUre o"KZ dk Nk= gwWA eS l'kiFk c;ku djrk gwW fd& esjs firK th [ksrh dk dk;Z djrs gSA eSa 'kh'ks ij fMtkbu dk dke djrk gwWA eSaus fLl dkth ls lksuh mQZ lkfc;k ds lkFk viuk fudkg djok;k Fkk] mldk uke ugh ekywe gSA eSaus ;g fudkg vius nksLr ekSgEen gqLSu ds ?kj ij fd;k Fkka dkth us fudkgukesha esa fudkg dh rkjh[k xyr ugha fy[kk gksxka lksuh dk /keZ ifjorZu 'kknh ds fy, gqvK Fkka eSa bLyke /keZ ds ckjs esa T;knk ugha tkurk gwWA eSa fLQZ bruk tkurk gwW fd uekt i<+uk pkfg,] >wB ugh cksyuk pkfg, rFkk /kks[kk ugh nsuk pkfg,A^^

(viii) From the above noted facts it is evident that the petitioner No.1 has stated that she knows nothing about Islam. Petitioner No.2 got converted her religion for Nikah on 15th July, 2014. Petitioner No.2 has stated that the religion of petitioner No.1 was converted for marriage purpose and he performed the Nikah at the residence of his friend Mohd. Husain by a Qazi whose name he does not know.

(ix) Affidavit accompanying the writ petition was sworn on 28th October, 2014 and writ petition was presented on 3rd November, 2014 without any proof of alleged conversion. In paragraph 12 it has been stated by personal knowledge that the urgency of matter in summer vacation is that the local police in connivance of the father of the petitioner No.1 is harassing the petitioners and the petitioners made representation before the Respondent No.2 about their harassment but nothing was done till date. It is about four months subsequent to the summer vacation that this writ petition was filed.

(x) The totality of the circumstances clearly shows that misleading averments have been made in the writ petition. The petitioner No.2 got converted the religion of petitioner No.1 merely for marriage purposes. Petitioner No.1 stated that she does not know about Islam. The averments made in paragraph No. 12 could not be explained by the petitioners even though it was specifically pointed out to them. This also indicates that the writ petition is based on suppression of facts and misleading averments.

25. In view of the above discussions the writ petition deserves to be dismissed.

26. A common feature in all these writ petitions are that petitioner No.2 (boy) in each of the writ petitions have got converted the religion of petitioner No.1 girl only for marriage. The petitioner

No.1 girl in each of the writ petitions have stated that their religion was got converted by the petitioner No.2 for marriage. They have not stated that they have renounced "Hindu" religion. Thus an interesting question based on submissions of learned counsel for the parties arises as under:

"Whether conversion of religion of a Hindu girl at the instance of a Muslim boy, without any knowledge of Islam or faith and belief in Islam and merely for the purpose of Marriage (Nikah) is valid?"

What is religion

27. There is no consensus as to the definition of the word "Religion". Etymologically, the expression "religion" is the combination of two Latin words; "Re" meaning back and "ligare" meaning to bind. It is ordinarily understood to mean some system of faith and practice resting on the idea of the existence of God, the creature and ruler to whom his creature owe obedience and love. It is founded on reverence of God and expectation of future rewards and punishments. It is system of divine faith and worship. The quest of man for God is the foundation for religion and its essential function is "the search for God and the finding of God".

28. In the case of A.S. Narayana Deekshitulu Vs. State of A.P. and others (1996) 9 SCC 548 Hon'ble Supreme Court considered the meaning of the word "Religion" and Article 25 and 26 of the Constitution and held as under:

"85. Articles 25 and 26 deal with and protect religious freedom. Religion as used in these articles must be construed in its strict and etymological sense. Religion is that which binds a man with his Cosmos, his Creator or super force. It is difficult and rather impossible to define or delimit the expressions 'religion' or 'matters of religion' used in Articles 25 and 26. Essentially, 'religion' or 'matters of religion' used in Articles 25 and 26. Essentially, religion is a matter of personal faith and belief of personal relations of an individual with what he regards as Cosmos, his Maker or his Creator which, he believes, regulates the existence of insentient beings and the forces of the universe. Religion is not necessarily theistic and in fact there are well-known religions in India itself like Buddhism and Jainism which do not believe in the existence of God. In India, Muslims believe in Allah and have faith in Islam; Christians in Christ and Christianity; Parsis in Zoroastrianism; Sikhs in Guru Granth Sahib and teachings of Guru Nanak Devji, its founder, which is a facet of Hinduism like Brahmo Samaj, Arya Samaj etc.

86. A religion undoubtedly has its basis in a system of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. A religion is not merely an opinion, doctrine or belief. It has outward expression in acts as well. It is not every aspect of religion that has been safeguarded by Articles 25 and 26 nor has the Constitution provided that every religious activity cannot be interfered with. Religion, therefore, cannot be construed in the context of Articles 25 and 26 in its strict and etymological sense. Every religion must believe in a conscience and

ethical and moral precepts. Therefore, whatever binds a man to his own conscience and whatever moral or ethical principles regulate the lives of men believing in that theistic, conscience or religious belief that alone can constitute religion as understood in the Constitution which fosters feeling of brotherhood, amity, fraternity and equality of all persons which find their foothold in secular aspect of the Constitution. Secular activities and aspects do not constitute religion which brings under its own cloak every human activity. There is nothing which a man can do, whether in the way of wearing clothes or food or drink, which is not considered a religious activity. Every mundane or human activity was not intended to be protected by the Constitution under the guise of religion. The approach to construe the protection of religion or matters of religion or religious practices guaranteed by Article 25 and 26 must be viewed with pragmatism since by the very nature of things, it would be extremely difficult, if not impossible, to define the expression religion or matters of religion or religious belief or practice.

90 The religious freedom guaranteed by Articles 25 and 26, therefore, is intended to be a guide to a community-life and ordain every religion to act according to its cultural and social demands to establish an egalitarian social order. Articles 25 and 26, therefore, strike a balance between the rigidity of right to religious belief and faith and their intrinsic restrictions in matters of religion, religious beliefs and religious practices and guaranteed freedom of conscience to commune with his Cosmos, Creator and realise his spiritual self. Sometimes, practices religious or secular, are inextricably mixed up. This is more particularly so in regard to Hindu religion because under the provisions of ancient Samriti, human actions from birth to death and most of the individual actions from day to day are regarded as religious in character in one facet or the other. They sometimes claim the religious system or sanctuary and seek the cloak of constitutional protection guaranteed by Articles 25 and 26. One, hinges upon constitutional religious model and another diametrically more on traditional point of view. The legitimacy of the true categories is required to be adjudged strictly within the parameters of the right of the individual and the legitimacy of the State for social progress, well-being and reforms, social intensification and national unity. Law is a social engineering and an instrument of social change evolved by a gradual and continuous process. As Benjamin Cardozo has put it in his "Judicial Process", life is not a logic but experience. History and customs, utility and the accepted standards of right conduct are the forms which singly or in combination shall be the progress of law. Which of these forces shall dominate in any case depends largely upon the comparative importance or value of the social interest that will be, thereby, impaired. There shall be symmetrical development with history or custom when history or custom has been the motive force or the chief one in giving shape to the existing rules and with logic or philosophy when the motive power has been theirs. One must get the knowledge just as the legislature gets it from experience and study and reflection in proof from life itself. All secular activities which may be associated with religion but which do not relate or constitute an essential part of it may be amenable to State regulations but what constitutes the

essential part of religion may be ascertained primarily from the doctrines of that religion itself according to its tenets, historical background and change in evolved process etc. The concept of essentiality is not itself a determinative factor. It is one of the circumstances to be considered in adjudging whether the particular matters of religion or religious practices or belief are an integral part of the religion. It must be decided whether the practices or matters are considered integral by the community itself. Though not conclusive, this is also one of the facets to be noticed. The practice in question is religious in character and whether it could be regarded as an integral and essential part of the religion an if the Court finds upon evidence adduced before it that it is an integral or essential part of the religion, Article 25 accords protection to it. Though the performance of certain duties is part of religion and the person performing the duties is also part of the religion or religious faith or matters of religion, it is required to be carefully examined and considered to decide whether it is a matter of religion or a secular management by the State. Whether the traditional practices are matters of religion or integral and essential part of the religion and religious practice protected by Articles 25 and 26 is the question. Whether hereditary archaka is an essential and integral part of the Hindu religion is the crucial question?"

(Emphasis supplied by me)

29. Thus, although, it is difficult rather impossible to define or delimit the expression "religion" yet essentially it is a matter of personal faith and belief of personal relations of an individual with what he regards Cosmos, his maker or Creator which, he believes, regulates the existence of insentient beings and the forces of Universe. A religion undoubtedly has its basis in a system of beliefs and doctrine which are regarded by those who profess religion to be conducive to their spiritual well-being. It is a matter of faith stemming from the depth of the heart and mind. It is a belief which binds the spiritual nature of man to a super natural being. It is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense is a conscreration and denotes an act of worship. Faith in the strict sense constitutes firm reliance on the truth of religious doctrines in every system of religion.

Who is a Mahomedan

30. As per the book Mulla's Principles of Mahomedan Law, 19th edition Chapter II, any person who professes the Mahomedan religion, that is, acknowledges (1) that there is but one God, and (2) that Mahomed is His Prophet, is a Mahomedan. Such a person may be a Mahomedan by birth or he may be a Mahomedan by conversion. It is not necessary that he should observe any particular rites or ceremonies, or be an orthodox believer in that religion; no Court can test or gauge the sincerity of religious belief. It is sufficient if he profess the Mahomedan religion in the sense that he accepts the unity of God and the prophetic character of Mahomed. Thus a non muslim who has attained majority and is of sound mind may embrace 'Islam' by declaring that he believes in the oneness of God and the prophetic character and that Mahomed is his prophet. He shall be a Mahomedan if he profess the Mahomedan religion in the sense that he accepts the unity of God and prophetic

character of Mahomed.

31. The word 'profess' was interpreted by Hon'ble Supreme Court in the case of Punjabrao Vs. Dr. D.P. Meshram and others AIR (1965) SC 1179 and held as under:

"13. What cl. (3) of the Constitution (Scheduled Castes) Order, 1950 contemplates is that for a person to be treated as one belonging to a Scheduled Caste within the meaning of that Order he must be one who professes either Hindu or Sikh religion. The High Court, following its earlier decision in Narayan Waktu v. Punjabrao, has said that the meaning of the phrase "professes a religion" in the aforementioned provision is "to enter publicly in to a religious state" and that for this purpose a mere declaration by a person that he has ceased to belong to a particular religion and embraced another religion would not be sufficient. The meanings of the word "profess" have been given thus in Webster's New World Dictionary: "to avow publicly, to make an open declaration of to declare one's belief in : as to profess Shrist. To accept into a religious order" The meanings given in the Shorter Oxford Dictionary are more or less the same. It seems to us that the meaning 'to declare one's belief in : as to profess christ' is one which we have to bear in mind while construing the aforesaid order because it is this which bears upon religious belief and consequently also upon a change in religious belief. It would thus follow that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word 'profess' in the Presidential Order appears to have been used in the sense an open declaration or practice by a person of the Hindu for the Sikh religion. Where, therefore, a person says, on the contrary that he has ceased to be Hindu he cannot derive any benefit from the order."

(Emphasis supplied by me)

32. Thus a person who accepts the oneness of God and the prophetic character of Mahomed and that Mahomed is his prophet, is called a Mahomedan.

Conversion of Religion

33. Conversion to another religion basically requires change of faith and belief of personal relations of a major individual of sound mind by his free will, with what he/she regards as Cosmos, his/her Maker or Creator, which he/she believes, regulates the existence of insentient beings and the forces of Universe.

34. Faith and belief in the unity of God and Mahomed to be his/her prophet is the foundation to call a person of another religion that he embraced Islam. Conversion to Islam makes the muslim

personal law applicable to such a person.

When conversion bonafide

35. A conversion of religion by an individual to Islam can be said to be bonafide if he/she is major and of sound mind and embraces Islam by his/her own freewill and because of his/her faith and belief in the oneness of God (Allah) and prophetic character of Mahomed. If a conversion is not inspired by religion feeling and under gone for its own sake, but is resorted merely with object of creating a ground for some claim of right or as a device adopted for the purpose to avoid marriage or to achieve an object without faith and belief in the unity of God (Allah) and Mahomed to be his prophet, the conversion shall not be bonafide. In case of a religion conversion there should be a change of heart and honest conviction in the tenets of new religion in lieu of tenets of the original religion.

36. In the case of *Rakeya Bibi v. Anil Kumar Mukherjee*, ILR 1948 (2) Cal 119, the Division Bench of Calcutta High Court has observed as under:

"The question, however, still remains whether her conversion was a bona fide one or a mere device adopted for the purpose of avoiding the marriage. Mr. Das, who appeared for her, contended on the authority of certain observations made by Ormond J. In the case of *Ayesh Bibi v. Subodh chandra Chakrabarti*. *ILR (1945) 2 Cal 405) : AIR 1949 Cal 436 that the question of bona fides was wholly irrelevant and, further that no court could determine the bona fides or otherwise of a person's change of faith. We entirely dissent from those propositions. It may be that a court cannot test or gauge the sincerity of religious belief, or that, where there is no question of the genuineness or a person's belief in a certain religion, a court cannot measure its depth or determine whether it is an intelligent conviction or an ignorant and superficial fancy. But a court can and does find the true intention of men lying behind their acts and one certainly find from the circumstances of a case whether a pretended conversion was really a means to some further end. We can see no reason to hold that it is in the nature of things impossible for a court of law to determine whether a conversion was bona fide. Nor can we agree that the question of bona fides is immaterial. In the case of *Skinner v. Skinner* (1897) ILR 25 Cal 537 the Privy Council, while referring to the possibility that a change of religion on the part of both the spouses might have the effect of altering rights incidental to the marriage, was careful to add the qualification that such change must be made "honestly" and "without any intent to commit a fraud upon the law" Indeed, it seems to us to be elementary that if a conversion is not inspired by religious feeling and undergone for its own sake, but is resorted to merely with the object of creating a ground for some claim of right, a court of law cannot recognise it as a good basis for such claim but must hold that no lawful foundation of the claim has been proved. Where conversion gives a legal right, to go through a mock conversion and set it up as a basis of that right is to commit a fraud upon the law. We are clearly of opinion that were a party puts forward his conversion to a new faith as creating a right in his favour to the

prejudice of another, it is proper and necessary for a court of law to enquire and find whether the conversion was a bona fide one."

Thus in case of a conversion there should be a change of heart and honest conviction in the tenets of new religion in lieu of tenets of the original religion. If a ceremony of conversion is gone into conscientiously after such an honest conviction, there alone there is a conversion of faith or it can be said that a person is professing another religion. In case of conversion from one religion to another a strict proof is required and it cannot be easily interred. More so when a person converted denies even the factum of conversion. As to whether there in fact a conversion or not must depend on facts and circumstances of each case and not general rule can be laid down in that behalf."

37. In the case of Dr. Abdur Rahim Undre Vs. Smt. Padma Abdur Rahim Undre AIR 1982 Bombay 341, the Bombay High Court considered the question of conversion and held as under:

"27. It is a well known principle of civil law that a person born into or following one religion continues to belong to such religion subject to conversion to another religion. Conversion to another religion basically requires change of faith. To say the least it is a matter of conviction. According to Mulla's Principle of Mohammedan Law any person who professes Mohammedan religion that is, he acknowledges that there is but one God and that Mohammad is his prophet is a Mohammedan. Such a person may be a Mohammedan by birth or he may be a Mohammedan by conversion. It is not necessary that he should observe any particular rites or ceremony to be an orthodox believer in the religion, no Court can test or gauge sincerity of religious belief. It is sufficient if he professes Mohammedan religion in the sense that he accepts prophetic grant of Mohammedan (section 19, Chapter 2, page 19 of Mulla's Principles of Mohammedan Law). Thus the real test is of professing Mohammedan religion. As to when is the true import of the term profess fell for consideration of the Supreme Court in Punjabrao V. D. P. Meshram, of the said decision the Supreme Court has observed as under:

"13. What cl. (3) of the Constitution (Scheduled Castes) Order, 1950 contemplates is that for a person to be treated as one belonging to a Scheduled Caste within the meaning of that Order he must be one who professes either Hindu or Sikh religion. The High Court, following its earlier decision in Narayan Waktu v. Punjabrao, has said that the meaning of the phrase "professes a religion" in the aforementioned provision is "to enter publicly in to a religious state" and that for this purpose a mere declaration by a person that he has ceased to belong to a particular religion and embraced another religion would not be sufficient. The meanings of the word "profess" have been given thus in Webster's New World Dictionary: "to avow publicly, to make an open declaration of to declare one's belief in : as to profess Shrist. To accept into a religious order" The meanings given in the Shorter Oxford Dictionary are more or less the same. It seems to us that the meaning 'to declare one's belief in : as to profess Christ' is one which we have to bear in mind while construing the aforesaid order because it is this which bears upon religious belief and

consequently also upon a change in religious belief. It would thus follow that a declaration of one's belief must necessarily mean a declaration in such a way that it would be known to those whom it may interest. Therefore if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious. The word 'profess' in the Presidential Order appears to have been used in the sense an open declaration or practice by a person of the Hindu for the Sikh religion. Where, therefore, a person says, on the contrary that he has ceased to be Hindu he cannot derive any benefit from the order."

Thus it appears that for a conversion there should be a declaration of one's belief and the said declaration should be in such a way that it should be known to those whom it may interest. If a public declaration is made by a person that he has ceased to belong to one religion and is accepting another religion, he will be taken as professing the other religion.

28. In *Rakeya Bibi v. Anil Kumar Mukherjee*, ILR 1948 (2) Cal 119, Calcutta High Court has an occasion to consider this aspect of the matter in the context of conversion to Islam. Having held that the plaintiff in that case offered herself for conversion and went through the necessary formalities, the Calcutta High Court observed as under:

"The question, however, still remains whether her conversion was a bona fide one or a mere device adopted for the purpose of avoiding the marriage. Mr. Das, who appeared for her, contended on the authority of certain observations made by Ormond J. In the case of *Ayesh Bibi v. Subodh chandra Chakrabarti*, (ILR (1945) 2 Cal 405) : AIR 1949 Cal 436 that the question of bona fides was wholly irrelevant and, further that no court could determine the bona fides or otherwise of a person's change of faith. We entirely dissent from those propositions. It may be that a court cannot test or gauge the sincerity of religious belief, or that, where there is no question of the genuineness of a person's belief in a certain religion, a court cannot measure its depth or determine whether it is an intelligent conviction or an ignorant and superficial fancy. But a court can and does find the true intention of men lying behind their acts and one certainly finds from the circumstances of a case whether a pretended conversion was really a means to some further end. We can see no reason to hold that it is in the nature of things impossible for a court of law to determine whether a conversion was bona fide. Nor can we agree that the question of bona fides is immaterial. In the case of *Skinner v. Skinner* (1897) ILR 25 Cal 537 the Privy Council, while referring to the possibility that a change of religion on the part of both the spouses might have the effect of altering rights incidental to the marriage, was careful to add the qualification that such change must be made "honestly" and "without any intent to commit a fraud upon the law" Indeed, it seems to us to be elementary that if a conversion is not inspired by religious feeling and undergone for its own sake, but is resorted to merely with the object of creating a ground for some claim of right, a court of law cannot recognize it as a good basis for such claim but

must held that no lawful foundation of the claim has been proved. Where conversion gives a legal right, to go through a mock conversion and set it up as a basis of that right is to commit a fraud upon the law. We are clearly of opinion that were a party puts forward his conversion to a new faith as creating a right in his favour to the prejudice of another, it is proper and necessary for a court of law to enquire and find whether the conversion was a bona fide one."

Thus in case of a conversion there should be a change of heart and honest conviction in the tenets of new religion in lieu of tenets of the original religion. If a ceremony of conversion is gone into conscientiously after such an honest conviction, there alone there is a conversion of faith or it can be said that a person is professing another religion. In case of conversion from one religion to another a strict proof is required and it cannot be easily interred. More so when a person converted denies even the factum of conversion. As to whether there in fact a conversion or not must depend on facts and circumstances of each case and not general rule can be laid down in that behalf."

(Emphasis supplied by me)

38. In the case of Dilbar Habib Siddiqui Vs. State of U.P. and others 2010 (69) ACC 997(DB) this Court has held as under:

"6. The primary question which is to be adjudicated by us is as to whether the impugned FIR can be quashed or not on the peculiar facts of the writ petition? A perusal of the contents of the impugned FIR indicates that Khushboo Jaiswal is alleged to have been abducted by the petitioner three months prior to the lodging of it. By his dexterous manuvours and deceit petitioner had succeeded in not getting the FIR registered against him for all this period. It is informant's allegation that petitioner had abducted her daughter. Writ Petition further reveals that Khushboo never converted herself into Islam. There is no document regarding her such conversion. In our above conclusion we are fortified by the fact that in the affidavit and application filed by Khushboo herself subsequent to her alleged contract marriage she has described herself as Khushboo and not by any Islamic name. As Khushboo she could not have contracted marriage according to Muslim customs. In those referred documents she has addressed herself as Khushboo Jaiswal daughter of Rajesh Jaiswal. Thus what is conspicuously clear unerringly without any ambiguity is that Khushboo Jaiswal never converted and embraced Islam and therefore her marital tie with the petitioner Dilbar Habib Siddiqui is a void marriage since the same is contrary to Islamic dicta and tenets of Holy Quran. It is recollected here that Nikah i.e. marriage in pre- Islamic Arabia, meant different forms of sex relationships between a man and a woman. Prophet Mohammed brought about a complete change in the position of woman in society through Holy Quran, which is the primary and basic source of Islamic Law. In this respect we can do no better than to refer the verses of Holy Quran. Sura 2 Ayat 221 of The Holy Quran as is mentioned in the text book of Mohammedan Law by I.Mulla, 1st Edition, 2nd reprint, at page 162, provides as follows:-

"Do not marry unbelieving women until they believe..... Nor marry your girls to unbelievers until they believe" .

Here a believing women is referred to such a women who has embraced Islam and has faith in Prophet Mohammed. Marriage in Muslim law is not only a ritual but is also "a devotional act" as Dr.M.U.S. Jang referred it in his book 'Desertion on the Development of Muslim Law in British India' (page 1.2.). I. Mulla in his above text book at page 166 has written thus:-

"Koranic injunctions recognise in Islam, marriage as the basis of society. Though it is a contract, it is also a sacred covenant. Temporary marriages are forbidden. Marriage as an institution leads to the uplift of man and is a means for the continuance of human race."

8. Thus for a valid Muslim marriage both the spouses have to be Muslim. In the present writ petition this condition is not satisfied as the writ petition lacks credible and accountable material in this respect on which reliance can be placed.

Coming to another limb of argument raised by counsel for the petitioner that a muslim man is entitled to marry four time, we once again revert back to recognised treatises. We find that Sura 4 Ayat 3 of The Holy Quran provides for giving due care and provisions for a Muslim women. The said Ayat, as is referred to in the treatise by I.Mulla, is referred to below:-

"(vi) Number of wives- If ye fear that ye shall not be able to deal justly with the orphans (orphan wives and their property); marry woman of your choice, two or three or four; But if you fear that ye shall not be able to deal justly (with them), then only one.....that would be more suitable to prevent you from doing injustice."

From the perusal of above Ayats it is abundantly clear that bigamy is not sanctified unless a man can do justice to orphans. The said Ayat mandates all Muslims men to 'deal justly with orphans and then they can marry women of their choice two or three or four but if they fear that they will not be able to deal justly with them then only one. We are of the view, that such a religious mandate has been given to all the Muslims for a greater social purpose. If a Muslim man is not capable of fostering his wife and children then he cannot be allowed the liberty to marry other women as that will be against the said Sura 4 -Ayat-3.This aspect of the matter should not vex our mind further as the same came up before the apex court as well in Javed And Others versus State of Haryana: AIR 2003 SC 3057 and therefore we conclude this aspect of the submission by referring to the words of the apex court in that decision, which are as follows:-

"The Muslim Law permits marrying four women. The personal law nowhere mandates or dictates it as a duty to perform four marriages. No religious scripture or authority provides that marrying less than four women or abstaining from procreating a child from each and every wife in case of permitted bigamy or polygamy would be irreligious or offensive to the dictates of the religion. The question of the

impugned provision of Haryana Act being violative of Art. 25 does not arise."

39. As per the Holly Quran translated by Abdullah Yusuf Ali (published by Nusarat Ali Nasari for Kitab Bhawan, New Delhi in 1994), Sura II Ayat 221 of the Holy Quran mandates as under:-

"Do not marry Unbelieving women, Until they believe:

A slave woman who believes Is better than an unbelieving woman, Even though she allure you.

Nor marry (your girls) To unbelievers until They believe:

A man slave who believes Is better than an unbeliever, Even though he allure you.

Unbelievers do but Beckon you to the Fire.

But God beckons by His Grace To the Garden (or Bliss).

And forgiveness, And forgiveness, And makes His Signs Clear to mankind:

That they may Celebrate His Praise."

40. In the case of Rev. Stainislaus Vs. State of Madhya Pradesh and others Vs. State of Madhya Pradesh 1977 (1) SCC 677 Para 20 Hon'ble Supreme Court while considering the constitutional validity of M.P. Dharma Swantantraya Adhiniyam, 1968 observed as under:

We have no doubt that it is in this sense that the word 'propagate' has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike."

41. In the case of Lily thomas v. Union of India 2000 (6) SCC 224 in paragraph Nos. 7,8,37,38 and 40 the Hon'ble Supreme Court has held as under:

"7. It may be stated that on 23.4.1990 when Writ Petition (C) No. 1079 of 1989 and Writ Petition (C) No. 347 of 1990 were taken up together, the Court had passed the following order:

"Issue notice to Respondent 3 returnable within twelve weeks in both the writ petitions. Learned counsel for the petitioners in the writ petitions, after taking instructions, states that the prayers in both the writ petitions are limited to a single relief, namely, a declaration that where a non-Muslim male gets converted to the Muslim faith without any real change of belief and merely with a view to avoid any earlier marriage or to enter into a second marriage any marriage entered into by him after conversion would be void."

8. Thus, in view of the pleadings in Sushmita Ghosh case and in view of the order passed by this Court in the writ petitions filed separately by Smt. Sarla Mudgal and Ms. Lily Thomas, the principal question which was required to be answered by this Court was that where a non-Muslim gets converted to the "Muslim" faith without any real change of belief and merely with a view to avoid an earlier marriage or to enter into a second marriage, whether the marriage entered into by him after conversion would be avoided.

37 In any case, as pointed out earlier in the instant case, the conversion is only feigned, subject to what may be found out at the trial.

38 Religion is a matter of faith stemming from the depth of the heart and mind. Religion is a belief which binds the spiritual nature of man to a super-natural being; it is an object of conscientious devotion, faith and pietism. Devotion in its fullest sense is a consecration and denotes an act of worship. Faith in the strict sense constitutes firm reliance on the truth of religious doctrines in every system of religion. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry. Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited. The institution of marriage under every personal law is a sacred institution. Under Hindu Law, Marriage is a sacrament. Both have to be preserved.

40. I also agree with Brother Sethi, J. that any direction for the enforcement of Article 44 of the Constitution could not have been issued by only one of the Judges in Sarla Mudgal's case. In fact, Sarla Mudgal's case was considered by this Court in Ahmedabad Women Action Group & Ors. Vs. Union of India (1997) 3 SCC 573 and it was held that the question regarding the desirability of enacting a Uniform Civil Code did not directly arise in Sarla Mudgal's case. I have already reproduced the order of this Court passed in Sarla Mudgal's case on 23.4.1990 in which it was clearly set out that the learned counsel appearing in that case had, after taking instructions, stated that the prayers were limited to a single relief, namely, a declaration that where a non-Muslim male gets converted to the Muslim faith without any real change of belief and merely with a view to avoid any earlier marriage or to enter into a second marriage, any marriage entered into by him after conversion would be void."

42. In view of the above discussions, the principles of conversion of religion and bonafide conversion of religion to Islam may be briefly summarized as under:

(i) Conversion to another religion basically requires change of faith and belief of personal relations of an individual with what he regards as Cosmos, his Maker or his Creator, which he believes, regulates the existence of insentient beings and the forces of Universe.

(ii) A conversion of religion by an individual to Islam can be said to be bonafide if he/she is major and of sound mind and embraces Islam of his/her own freewill and because of his/her faith and belief in the oneness of God (Allah) and prophetic character of Mahomed. If a conversion is not inspired by religion feeling and under gone for its own sake, but is resorted merely with object of creating a ground for some claim of right or as a device adopted for the purpose to avoid marriage or to achieve an object without faith and belief in the unity of God (Allah) and Mahomed to be his prophet, the conversion shall not be bonafide.

(iii) In case of a religion conversion there should be a change of heart and honest conviction in the tenets of new religion in lieu of tenets of the original religion.

(iv) Religion, faith or devotion are not easily interchangeable. If a person feigns to have adopted another religion just for worldly gain or benefit, it would be religious bigotry.

(v) If a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike under Article 25 of the Constitution of India."

43. Applying the above noted principles as laid down in various judgments and mandate of The Holy QURAN in Sura II Ayat 221, I find that alleged conversion of petitioner No.1, girl in each of the writ petitions cannot be said to be bonafide or valid. The religion of petitioner No.1 in each of the writ petitions was converted at the instance of the petitioner No.2 (boys) to marry with the girl. The petitioner girls have stated that they do not know about Islam. In the writ petition as well as in the statements on oath made before this Court, the petitioner girls have not stated that they have any real faith and belief in the unity of God and Mohamed to be prophet. They all stated that the boy got their religion converted with sole purpose to marry with her. Thus conversion of religion to Islam, in the present set of facts, of the girls without their faith and belief in Islam and at the instance of the boys, solely for the purpose of marriage, cannot be said to be a valid conversion to Islam religion. These marriages (Nikah) are against the mandate in Sura II Ayat 221 of the Holy Quran. Even in the case of Lily Thomas (supra) Hon'ble Supreme Court observed in paragraph Nos. 7,8 and 40 that conversion of religion of a non-muslim without any real change of belief in Islam and only for marriage is void.

44. In result, all the writ petitions fail and are hereby dismissed. However there shall be no order as to costs.

order Date :- 16.12.2014 MT**