

"CR"**JUDGMENT****Raja Vijayaraghavan, J.**

The petitioners herein, being the parents of Ms. X (name withheld for privacy), state that Ms. X, aged approximately 23 years and a graduate, has formed an acquaintance with the 5th respondent, who is identified as a member of the LGBTQ+ community. The 5th respondent, along with others, has established an online social media group by name "Mazhavillu " and they are alleged to have lured their daughter into joining this group. They contend that their daughter is suffering from certain behavioral issues and on previous occasions had to seek treatment under a Counseling Psychologist. To substantiate their claim, the petitioners rely on Ext.P3, a certificate issued by the psychologist, indicating that Ms. X, after counselling, was referred to the Psychiatry Department of the Quilon District Hospital for psychiatric evaluation, treatment and management as she was found engaged in a toxic relationship with the person of the same gender.

2. The petitioners further state that their daughter went

missing and they had to lodge a complaint with the police, leading to the registration of Crime No. 815/2024 at the Kottarakkara Police Station under Section 57 of the Kerala Police Act. Ms. X was subsequently located and produced before the Magistrate. The petitioners claim that when they attempted to save their daughter from the clutches and influence of the 5th respondent and her men, a complaint was lodged by the latter, resulting in the registration of Crime No. 836/2024 under various provisions of the IPC, wherein the petitioners and others have been named as the accused. They assert that, under the pretext of dispute resolution, Ms. X was invited by the 5th respondent and subsequently forcefully taken away. Despite lodging a complaint with the police, no action has been taken to date. Complaining that Ms. X is being illegally detained by the 5th respondent, this writ petition is filed seeking the following relief:

- i. Issue a writ in the nature of Habeas Corpus or any other appropriate writ, order or direction, commanding the respondents 1 to 4 to take the custody of the detinue, Thahira, aged 23 years, and produce the detinue before this Hon'ble Court from the illegal custody and detention of 5th and 6th respondents;

3. This Court issued notice by special messenger calling upon the party respondents to appear in person before this Court along with

Ms. X.

4. Ms. X and her partner have appeared before us in person. We have interacted with them while ensuring privacy and safety of the lady. Ms.X stated before us that she has completed her Graduation in English and is also proficient in Tally software. She stated that the 5th respondent is a transman and she has consciously chosen to be his partner. She stated that her parents, under the impression that the petitioner is suffering from some psychiatric issues, forced her to undergo counselling with a view to persuade her to overcome her identity and sexual orientation. As she found that the attitude and behavior of her natal family objectionable and traumatic to her psyche, she left the company of her parents to join the 5th respondent. This prompted her parents to lodge a complaint before the police under the caption "person missing". She had appeared before the learned Magistrate and had stated in unequivocal terms that the 5th respondent is her chosen partner and she intends to live with him. The learned Magistrate had permitted her to join the 5th respondent. However, her parents and relatives attempted to abduct her and in the melee that followed, they assaulted the 5th respondent and inflicted injuries. She stated before us that she is fearful of retribution and violence at the

hands of her natal family as she has decided to live with her chosen partner. She asserted that she is safe in the company of the 5th respondent with whom she intends to stay.

5. The learned counsel appearing for the petitioners submitted that Ms. X is suffering from various psychological issues and she had undergone psychology counseling in Mindful Unified Cognitive Behaviour Therapy at Peringod and as advised by the Counsellor, she has been referred to the Psychiatric Department attached to the District Hospital. He stated that the parents have filed an application to refer Ms. X to the District Medical Board for psychological evaluation and to ascertain as to whether she is in a fit state of mind to take an independent decision. According to the learned counsel, it is only just and proper that the application be allowed and Ms. X be subjected to evaluation by the Board.

6. We have carefully considered the submissions advanced.

7. From our interaction, we found that Ms. X is an adult who has made an informed and conscious decision to live with the 5th respondent. Ms. X possesses an intelligent and capable frame of mind, enabling her to make autonomous choices and the manner in which she proposes to lead her life. The 5th respondent is her intimate friend, with

whom she intends to reside. The petitioners rely on Ext.P3, a counselling report issued by a Counselling Psychologist, wherein it is stated that Ms. X is engaged in a toxic relationship with a person of the same gender. We are of the view that the report proceeds on a fundamentally flawed premise and is liable to be ignored. The Psychologist appears to have operated under the erroneous presumption that expression of gender identity or sexual preferences by Ms.X is an act of defiance and if treated, her identity and sexual orientation could be altered. Such assumptions are baseless and inappropriate, and the report cannot be used to override the autonomous choices that Ms. X has made.

8. The Apex Court in **Devu G. Nair. State of Kerala**¹, while guidelines dealing with habeas corpus and police protection matters had succinctly held that directions for counseling or parental care have a deterrent effect on members of the LGBTQ+ community. Courts were advised to bear in mind that the concept of 'family' is not limited to natal families but also encompasses a person's chosen family. Though this is true for all persons, it has gained heightened significance for LGBTQ+ persons on account of the violence and lack of safety that they may experience at the hands of their natal family. When faced with humiliation, indignity, and even violence, people look to their partners

¹ [2024 SCC OnLine SC 351]

and friends who become their chosen family. It was also held that these chosen families often outlast natal families as a source of immeasurable support, love, mutual aid, and social respect. The principles and observations apply on all fours to the facts of the instant case.

9. The Yogyakarta Principles, an outcome of a 2006 International meeting in Yogyakarta, Indonesia, addressed the application of International Human Rights Law to the rights of LGBTIQ+ persons. The Preamble to the Yogyakarta Principles defines "Sexual Orientation" as each person's capacity for profound emotional, affectional, and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. For many LGBTIQ+ individuals, especially in India, expressing their gender identity or sexuality, is an act of defiance in a society that continues to set rigid cultural norms for gender identity and expression. From an early age, LGBTIQ+ individuals face stigma, violence, and discrimination on the basis of their identity. This stigma is often rooted in inaccurate beliefs and cultural norms that repress gender non-conforming behaviour and expressions. The economic, social and political discrimination against them can have long-term impacts on their mental health, employability, access to education, housing and shelter,

especially if such individuals experience familial rejection and isolation from social support systems. Many LGBTIQ+ youth face familial rejection, often from an early age. This rejection can take a devastating toll on individuals and isolate them from physical, emotional and economic resources that are essential to their well-being. In such cases, it is important to recognise the family as a site of violence and control for many queer women, who they need protection from rather than any “guardianship”. (See Sensitisation Module For The Judiciary On LGBTIQ+ Community brought out by the E- Committee Supreme Court of India available at <https://ecommitteesci.gov.in/document/sensitisation-module-for-the-judiciary-on-lgbtqa-community/>).

10. Article 21 provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The right to life and liberty affords protection to every citizen or non-citizen, irrespective of their identity or orientation, without discrimination. The right to privacy has now been recognised to be an intrinsic part of the right to life and personal liberty Under Article 21. Sexual orientation is an innate part of the identity of LGBT persons and is an essential attribute of privacy. Its protection lies at the core of

Fundamental Rights guaranteed by Articles 14, 15, and 21. The right to privacy is broad-based and pervasive under our Constitutional scheme, and encompasses decisional autonomy, to cover intimate/personal decisions and preserves the sanctity of the private sphere of an individual. The right to privacy is not simply the "right to be let alone", and has travelled far beyond that initial concept. It now incorporates the ideas of spatial privacy, and decisional privacy or privacy of choice. Sexual orientation is integral to the identity of the members of the LGBT communities. It is intrinsic to their dignity, inseparable from their autonomy and at the heart of their privacy. (See **Navtej Singh Johar v. Union of India**²).

11. Having considered the entire facts, we uphold the right of choice of the petitioner and respect her right to live life on her own terms. In that view of the matter, the petitioners are not entitled to any of the reliefs sought for. We reject the application filed by the parents to refer Ms. X to the District Medical Board for psychological evaluation.

12. At this stage, Ms. X stated before us that her educational certificates and personal IDs are retained by the petitioners and they have refused to hand it over. She stated that though adequately qualified to secure a job, she may not be able to apply and eke out a livelihood

² (2018) 10 SCC 1

unless the certificates are handed over. Having regard to the submissions, we are of the view that this is a fit case in which necessary directions are to be issued.

13. Resultantly, while dismissing this petition and granting Ms. X her liberty, we hereby direct the petitioners to submit all certificates, Identity Cards, and related documents belonging to Ms. X to the Station House Officer, Kottarakkara Police Station within one week from today. Upon receipt, Ms. X shall be notified, and appropriate measures shall be undertaken to ensure the prompt handover of these documents to her. The Station House Officer is instructed to ensure that no circumstances arise which could lead to threats or acts of violence against Ms. X by her family members.

14. Before parting, we express our hope that the petitioners will come to accept their daughter's sexual orientation and preferences with understanding and compassion.

sd/-

**RAJA VIJAYARAGHAVAN V
JUDGE**

sd/-

**P.M.MANOJ
JUDGE**

APPENDIX OF WP(CRL.) 592/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.815/2024 OF THE KOTTARAKKARA POLICE STATION
- Exhibit P2 TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.836/2024 OF THE KOTTARAKKARA POLICE STATION
- Exhibit P3 TRUE COPY OF THE MEDICAL CERTIFICATE DATED 20.05.2024 ISSUED BY SIDDEEK M., COUNSELLING PSYCHOLOGIST
- Exhibit P4 TRUE COPY OF THE COMPLAINT DATE 25.05.2024 SUBMITTED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT
- Exhibit P5 TRUE COPY OF THE COMPLAINT DATE 25.05.2024 SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT
- Exhibit P6 TRUE COPY OF THE COMPLAINT DATE 25.05.2024 SUBMITTED BY THE PETITIONERS BEFORE THE 4TH RESPONDENT
- Exhibit P7 TRUE COPY OF THE COMPLAINT DATE 25.05.2024 SUBMITTED BY THE PETITIONERS BEFORE THE 3RD RESPONDENT