

29.01.19  
Sl. No. 5  
akd

**W.P. 23120(W) of 2018**

[**SSG**] -Vs- *The State of West Bengal & Ors.*]

Mr. Kaushik Gupta .. Advocate  
Mr. Debayan Sen .. Advocate  
... .. for the petitioner

Mr. Sumanta Chakraborty .. Advocate  
Ms. Iti Dutta .. Advocate  
... .. for the respondent  
nos.5 to 7

Md. T. M. Siddiqui .. Advocate  
Md. Sabir Ahmed .. Advocate  
... .. for the State

We have perused the report.

It appears from the report that the victim namely, **MSB** is a major lady and is in a fit mental state. It appears from her statement recorded under Section 164 of the Code of Criminal Procedure that she is a lesbian and was residing with her partner i.e. the petitioner. She further stated that she is presently inclined to stay with her mother. It is made clear that the petitioner has freedom to choose her partner of any gender without being influenced by any person or authority in that regard.

In this regard, we are inclined to refer to the ratio of the Apex Court in the case of ***Navtej Singh Johar & Ors. vs. Union of India*** reported in ***(2018) 10 SCC 1*** wherein the Apex Court had declared that consensual cohabitation or carnal intercourse between two consenting adults of the same sex does not fall within the penal ambit of Section 377 of the Indian Penal Code.

In view of the aforesaid authority, consensual cohabitation between two adults of the same sex cannot, in our understanding, be illegal far less a crime. Fundamental right

to life under Article 21 of the Constitution of India inheres within its wide amplitude an inherent right of self-determination with regard to one's identity and freedom of choice with regard to sexual orientation or choice of partner.

We are of the view that such self-determination in the matter of sexual preference or consensual intercourse, even if not procreative, is inherent for the enjoyment of life and liberty of every individual and is protected under our scheme of constitutional morality and cannot be whittled down on the concept of morality or religion of others.

Hence, we observe that the victim namely, MSB, who is a major lady and has been assessed by psychologists to be of sound and competent mind is entitled to lead her own life as per her own choice in the matter of sexual orientation or preference to a partner unless the same contravenes any law for the time being in force.

With the aforesaid observation, the writ petition is disposed of.

Since no affidavit-in-opposition has been called for, the allegations made in the writ application are deemed to have been not admitted by the respondents.

There shall be no order as to costs.

Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

***(Ravi Krishan Kapur, J.)***

***(Joymalya Bagchi, J.)***