

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 31ST DAY OF AUGUST 2021 / 9TH BHADRA, 1943

WP(C) NO. 17187 OF 2021

PETITIONER:

SHAJIMOL.V,
D/O.KUNHUMOHAMMED, VETTIKATTIL HOUSE,
P.O.KALLADIPATTA, PALAKKAD DISTRICT, NOW
RESIDING AT KUNNAMKULATHINGAL HOUSE, SOUPARNIKA
NAGAR, P.O.GOVT. PRESS, SHORNUR, OTTAPALAM
TALUK, PALAKKAD DISTRICT-679122.

BY ADVS.

P.JAYARAM

GIGI PAPPACHAN

SARATH CHANDRAN K.B.

RESPONDENTS:

- 1 THE MARRIAGE OFFICER,
SUB REGISTRAR OFFICE, SHORNUR,
PALAKKAD DISTRICT-679121.
- 2 STATE OF KERALA REPRESENTED BY THE SECRETARY,
DEPARTMENT OF REGISTRATION, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.

SMT.B.VINITHA GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 31.08.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

P.B.SURESH KUMAR, J.

W.P.(C) No.17187 of 2021

Dated this the 31st day of August, 2021

J U D G M E N T

Petitioner is a divorcee. It is stated that she was married to one Mohammed in terms of the Islamic Personal Law and the said marriage was dissolved on 4.6.2010 by due pronouncement of Talak by the husband. The petitioner now intends to remarry. The marriage proposed is an inter-religious marriage. As such, the petitioner and her fiancée have given notice of the intended marriage before the first respondent under the Special Marriage Act, 1954 for solemnization of the marriage. It is alleged by the petitioner that the Marriage

Officer is insisting the petitioner to produce the decree passed by the court dissolving her earlier marriage. According to the petitioner, under the Muslim Personal Law, a Muslim can validly divorce his wife without resorting to any court proceedings and therefore, the Marriage Officer cannot insist on production of any court order dissolving the earlier marriage. The petitioner therefore, seeks directions to the first respondent to solemnize the marriage based on the notice of intended marriage given by the petitioner along with the fiancée in accordance with the provisions of the Special Marriage Act, without insisting on a court order dissolving the earlier marriage of the petitioner.

2. Heard the learned counsel for the petitioner as also the learned Government Pleader.

3. It is seen that an identical case has been disposed of by this court as per the judgment in **Fathima Sheriff and another v. Sub Registrar, Ekm. and another,**

2018(5) KHC 91 holding that the Marriage Officer is not justified in insisting court order dissolving the earlier marriage of the party. Paragraphs 7 and 8 of the judgment read thus :

“ 7. As stated herein above, nobody has a case that any of the parties to the first marriage has disputed about the legality and correctness of Ext. P1(6) 'talak' (divorce). In such cases, ordinarily, the grievance to challenge legality and correctness of 'talak' (divorce) is with the muslim wife concerned and in the instant case, the 1st petitioner herself is banking upon and relying on Ext. P1(6) 'talak' (divorce). Moreover, Ext.P1(7) is the certificate issued by the Thrissur Muslim Jama-Ath evidencing the factum of Ext.P1(6) 'talak' (divorce). Under these circumstances, it is not right and proper for the respondent Marriage Officer to insist as per the impugned Ext.P3 order that the petitioner should necessarily produce the decree of the competent Court evidencing dissolution of her first marriage. In the facts and circumstances of the case, it is only to be held that it is an impossibility for the first petitioner, who is the Muslim lady to secure such a decree, when the dissolution is on the basis of Ext. P1(6) 'talak' (divorce). However, to facilitate further action, it is ordered that the 1st petitioner will ensure that an affidavit sworn to by the competent office bearer of the Muslim Jama-Ath and attested

by a Notary Public is produced before the Marriage Officer stating about the authenticity of Ext.P1(7) certificate issued in regard to the factum of Ext.P1(6) 'talak' (divorce). Such notarized affidavit of the Jama-Ath may be made available by the 1st petitioner before the respondent Marriage Officer without much delay preferably within one week from the date notified for receiving a certified copy of this judgment. Accordingly, Ext.P3 dated 14/09/2018 will stand set aside.

8. Upon such production of affidavit, the respondent Marriage Officer will take further action in the matter of the request made by the petitioners for solemnization and registration of their marriage in accordance with the provisions contained in the Special Marriage Act, 1954 subject to satisfaction of all other conditions under the Act. Needless to say, that the commencement of the S.5 statutory notice of intended marriage will commence from the actual date of submission of that notice by the petitioners”.

In the light of the decision of this court aforesaid, the writ petition is disposed of directing that if the petitioner makes available an affidavit sworn to by the competent office bearer of the concerned Muslim Jama-Ath and attested by a Notary Public stating about the authenticity of the talak pronounced by the

former husband of the petitioner, the first respondent shall take further action for solemnization of the marriage based on the notice of intended marriage given by the petitioner and her fiancée in accordance with the provisions contained in the Special Marriage Act.

Sd/-

P.B.SURESH KUMAR, JUDGE.

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APPENDIX OF WP(C) 17187/2021

PETITIONER EXHIBITS

- Exhibit P1** TRUE COPY OF THE APPLICATION DATED 02.08.2021 SUBMITTED BY THE PETITIONER AND THE BRIDEGROOM BEFORE THE MARRIAGE OFFICER, SHORNUR FOR THEIR MARRIAGE UNDER THE SPECIAL MARRIAGE ACT.
- Exhibit P2** TRUE COPY OF THE CERTIFICATE DATED 27.03.2021 ISSUED BY THE SECRETARY, MELEPATTAMBI JUMA MASJID COMMITTEE, P.O.MELEPATTAMBI SHOWING THAT PETITIONER'S PREVIOUS MARRIAGE WITH MUHAMMED, S/O ISMAIL HAD BEEN DULY DISSOLVED ON 04.06.2010 BY PRONOUNCEMENT OF TALAQUE AS PER THE PETITIONER'S PERSONAL LAW, ISLAMIC LAW.
- Exhibit P3** TRUE COPY OF THE AFFIDAVIT DATED 30.03.2021 SWORN TO AND EXECUTED BY THE PETITIONER STATING THAT PETITIONER HAD BEEN MARRIED EARLIER AND WAS ALSO DIVORCED UNDER THE PERSONAL LAW APPLICABLE TO THE PETITIONER BY DUE PRONOUNCEMENT OF TALAQUE.