

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 26TH DAY OF NOVEMBER 2015/5TH AGRAHAYANA, 1937

Cr1.MC.No. 2353 of 2015 ()

CRL.R.P 15/2013 of ADDL. SESSIONS COURT - I, KALPETTA
DATED 16-12-2014

PETITIONER(S)/REVISION PETITIONER/PETITIONER:

1. P.C.KOTHA
KAIPARAMBIL HOUSE, THALIMALA, VYTHRI P.O.

2. JANAKI K. AGED 46 YEARS
D/O.P.C.KOTHA, VYTHIRI POST, VYTHIRI TALUK
WAYANAD DISTRICT.

BY ADV. DR.GEORGE ABRAHAM

RESPONDENT/RESPONDENT/RESPONDENT:

SUB DIVISIONAL MAGISTRATE, MANANTHAVADY
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SMT.MAYA.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 26-11-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

Cr1.MC.No. 2353 of 2015

APPENDIX

PETITIONERS' ANNEXURES :

A : COPY OF THE ORDER NO.J.5693/2010 OF THE SUB
DIVISIONAL MAGISTRATE, MANANTHAVADY DATED
16.11.2011.

B : COPY OF THE ORDER OF ADDITIONAL SESSIONS JUDGE-I,
KALPETTA DATED 16.12.2014 IN CRL.R.P NO.15/2013.

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.A TO JUDGE.

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B. KEMAL PASHA, J.

.....
Crl.M.C. No. 2353 of 2015
.....

Dated this the 26th day of November, 2015

ORDER

The date of birth of the 2nd petitioner on record is 15.05.1962. The 2nd petitioner claims that her actual date of birth is 12.12.1966. In support of her claim, she is relying on her horoscope, in which her date of birth is shown as 12.12.1966. A claim to that effect was forwarded before the learned Sub Divisional Magistrate, Mananthavady. The learned Sub Divisional Magistrate was not prepared to accept the horoscope as a document in order to substantiate the claim of the petitioners.

2. Dissatisfied by the dismissal of the claim by the learned Sub Divisional Magistrate, the petitioner has preferred a Criminal Revision before the Sessions Court, Kalpetta. The learned Sessions Judge has

carefully examined the matter and dismissed the Criminal Revision through Annexure-B order.

3. Heard the learned counsel for the petitioners.

4. The learned counsel for the petitioners has vehemently argued that both the courts below have not cared to go through and accept the horoscope as an evidence.

5. The learned counsel for the petitioners has invited the attention of this Court to the decision in **Registrar General, High Court of Madras v. M. Manickam and Others** [2011 (9) SCC 245], wherein it was held in paragraph 33 :-

“We reiterate the proposition of law laid down by this Court in the aforesaid decision that horoscope is a very weak piece of material to prove age of a person and that heavy onus lies on a person who wants to press it into service to prove its authenticity.”

The Apex Court has relied on the decision in **State of Punjab v. Mohinder Singh** [2005 KHC 547], wherein

also the aforesaid dictum was laid down.

6. When horoscope is a very weak piece of material to prove the age of a person, in a case wherein if prima facie the same cannot be accepted, any further proof in the matter is not at all expected. Here, in this particular case, it seems that the 2nd petitioner, who claims her date of birth as 12.12.1966, had joined the school at the first standard on 02.06.1969. Therefore, in such case, it has to be noted that the 2nd petitioner would have joined the first standard at the school when she was only just 2½ years. It is beyond common sense. Nobody can believe that a child of 2½ years was admitted to a school in the first standard. In such case, it further weakens the horoscope, which is a weak piece of material. It would be an idle exercise again to permit the 2nd petitioner to prove the horoscope.

7. The learned counsel for the petitioners has repeatedly requested this Court to extend further opportunity to the petitioners to prove the horoscope.

Even if, the person, who prepared the horoscope is examined and it is brought out that he had prepared the horoscope by noting down the date of birth as 12.12.1966, when it stands proved that the 2nd petitioner was admitted at the first standard in the school on 02.06.1969, the date of birth shown in horoscope cannot be believed. Matters being so, there is no meaning in remanding the matter for fresh consideration.

It seems that the learned Session Judge has granted an opportunity to the petitioners to seek appropriate remedies from the Civil Court, in the impugned order. By maintaining the said observation and such a liberty to the petitioners, this Crl.M.C is dismissed.

Sd/-

B.KEMAL PASHA, JUDGE

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