

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 29TH DAY OF MAY 2015/8TH JYAISHTA, 1937

Mat.Appeal.No. 85 of 2015 ()

AGAINST THE ORDER IN OP 542/2014 of FAMILY COURT,
PALAKKAD, DATED 10-11-2014

APPELLANT(S)/APPELLANT/PETITIONER/PETITIONER:

VINOD.K.V., AGED 37 YEARS,
S/O. VELAYUDHAN, KUTTALA VEEDU, KANNAMPARIYARAM,
MANKARA P.O., PALAKKAD.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P.

RESPONDENT(S)/RESPONDENT/RESPONDENT/RESPONDENT:

RAMAKRISHNAN, AGED 55 YEARS,
S/O. PONNU, BANGLAWPARAMBU, THATHAMANGALAM,
CHITTUR TALUK, PALAKKAD-678 102.

BY ADVS. SRI. BINOY VASUDEVAN
SRI.R.MANIKANTAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 29-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

Mat.Appeal.No. 85 of 2015

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE-A : COPY OF THE FIR IN CRIME NO.380/14 OF MANKARA
POLICE STATION

ANNEXURE-B : COPY OF THE RENTAL AGREEMENT DATED 10.12.2014

ANNEXURE-C : COPY OF THE ORIGINAL PETITION IN O.P.NO.542/14 ON
THE FILE OF FAMILY COURT, PALAKKAD.

ANNEXURE-D : COPY OF THE PETITION IN I.A.NO.819/2014 IN
O.P.NO.542/2014 ON THE FILE OF FAMILY COURT,
PALAKKAD.

ANNEXURE-E : COPY OF THE NOTICE DATED 26.07.2014.

RESPONDENTS EXHIBITS : NIL

//True Copy//

P.A. to Judge

SS

**C.K. ABDUL REHIM &
K. RAMAKRISHNAN, JJ.**

Mat. Appeal No.85 of 2015

Dated this the 29th day of May, 2015

JUDGMENT

K. Ramakrishnan, J

Father of the minor child Adarsh K.V., aged 6 years has filed this appeal, challenging the order passed by the Family Court, Palakkad, in I.A.No.819/2014 in O.P. No.542/2015.

2. The child was born to the appellant in the wedlock with deceased Nisha, the daughter of the respondent herein and during subsistence of marriage, she committed suicide and a crime was registered as Crime No. 380/2014 of Mankara police station against the appellant, his mother, brother and another relative in respect of this incident alleging commission of the offence under Section 306 of the Indian Penal Code. The child is with the maternal grandparents now. So he filed the above O.P. seeking permanent custody of the child and in that he filed

I.A.No.819/2014 seeking interim custody of the child. But the learned Family Court by the impugned order dismissed the application on the ground that the child is a witness in the criminal case and if custody is given to the appellant, there is a possibility of influencing the child and that will affect the outcome of the criminal prosecution. Aggrieved by the same, the present appeal has been preferred by the appellant / petitioner before the Family Court.

3. Heard the counsel for the petitioner and counsel for the respondent.

4. The counsel for the petitioner submitted that there is no allegation made in the statements said to have been given by the child before the investigating officer against the appellant and as such the apprehension raised by the court below is without any basis. Further even a visitorial right in the court premises was also denied and being the father he is entitled to have interaction with the child which has been denied.

5. This was stoutly opposed by the counsel for the respondent on the ground that, the child is going to be a witness in the criminal prosecution in respect of the suicide committed by the mother of the child and the wife of the appellant. The apprehension of the maternal grandparents is that, if the custody is given, the child is likely to be influenced by the father and the purpose of the criminal prosecution will be defeated.

6. It is an admitted fact that, the appellant is none other than the father of the minor child Adarsh. It is also an admitted fact that the mother of the child committed suicide while the marriage relationship between the appellant and the deceased Nisha was subsisting and in respect of the same on the basis of the complaint given by the parents of the deceased, a crime has been registered as Crime No.380/2014 of Mankara police station and the investigation of the case is completed and final report has been filed and it is pending before the committal court for

further proceedings. The lower court appears to have gone through the case diary files before passing the impugned order. Merely because a crime has been registered, suspecting the involvement of the petitioner in the suicide committed by the mother cannot be taken as a sole ground to deny even the visitorial right of the appellant. The apprehension of the maternal grandparents of the child may be genuine, if custody of the child is given exclusively even during the interim custody to the petitioner, but giving a visitorial right for the father of the child from the court premises for a short period in the presence of maternal grandparents and the court officer and preventing the appellant from discussing the child about the case will be sufficient to remove the apprehension of the maternal grandparents regarding the outcome of the criminal case. It may not be known as how much time it will take for the completion of the criminal case. During that time a right of the father to have at least interaction with the child cannot

be denied. The counsel for the respondent also submitted that, the child is not interested in having interaction with the father and he is afraid of the father, this also can be considered while giving the right of interaction with the child by the father as intended by us while disposing this appeal. So under the circumstances, we feel that the order passed by the court below is to be set aside and it can be modified as follows:

The petitioner can be given a visitorial right of the child for a period of two hours from the court premises that to in the presence of the maternal grandparents and a court officer deputed by the Family Court on alternate Saturdays from 6th June onwards at 11.00 a.m. The respondent shall produce the child before the family court on those occasions. After two hours, the court officer is directed to handover the custody of the child to the maternal grandparents. The interaction can be allowed, only if the child voluntarily goes and express his willingness to have

interaction with the appellant and no force can be imposed on the child for that purpose. Using force by the appellant, if the child is not willing to have any talk to the father is not allowed. The appellant is directed, not to make any scene in the court premises during this period as well and he cannot have any talk to the child regarding the pendency of the criminal case as well. The grandparents shall not prevent the interaction with the father in any manner, if the child is showing interest for that purpose.

With the above modification of the order of the court below, the matrimonial appeal is allowed to the extend mentioned above and disposed of accordingly.

Sd/-

C.K. Abdul Rehim, Judge

Sd/-

K. Ramakrishnan, Judge

//True Copy//

P.A. to Judge