

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

OP(Cr1.).No. 88 of 2015 ()

M.P.NO.130/15 IN M.C.NO.307/12 OF FAMILY COURT, ERNAKULAM

PETITIONER/PETITIONER:

SHIBULAL AGED 47 YEARS
S/O. PRAKASAN, PALLATHPARAMBIL HOUSE, CHELLANAM P.O.
KOCHI, PIN CODE-682008
REP. BY HIS FATHER P.P.PRAKASAN.

BY ADV. SRI.K.A.ANI JOSEPH

RESPONDENTS/RESPONDENTS/RESPONDENTS:

INDIRA .T.S., AGED 46 YEARS
D/O. LATE SREEDHARAN, THUNDIPARAMBIL HOUSE
THOPPUMPADY P.O., KOCHI-682005.

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 01-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONERS' EXHIBITS

EXHIBIT P1- TRUE COPY OF M.C.NO. 307 OF 2012 ON THE FILE OF FAMILY COURT, ERNAKULAM.

EXHIBIT P2- TRUE COPY OF THE O.P.NO. 1677 OF 2012 ON THE FILE OF FAMILY COURT ERNAKULAM.

EXHIBIT P3- TRUE COPY OF THE OBJECTION IN M.C.NO. 307 OF 2012 ON THE FILE OF THE FAMILY COURT, ERNAKULAM.

EXHIBIT P4- TRUE COPY OF THE M.P.NO. 130 OF 2015 IN M.C.NO. 307 OF 2012 ON THE FILE OF FAMILY COURT ERNAKULAM.

EXHIBIT P5- TRUE COPY OF THE ORDER IN M.P.NO. 130 OF 2015 TAKEN DOWN BY THE CONSEL FOR THE PETITIONER.

RESPONDENTS' EXHIBITS :NIL

RKC

TRUE COPY

PA TO JUDGE

P.UBAID, J.

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Dated this the 1st day of April, 2015

ORDER

The petitioner herein is the respondent in M.C.No.307/2012 of the Family Court, Ernakulam. During the proceeding, the affidavit filed by the petitioner in the trial court was accepted in lieu of examination in chief in September 2014, and the learned trial Judge posted the case for cross examination of the claimant. Later an Advocate Commissioner was appointed to record evidence. When the parties did not co-operate (as reported by the Advocate Commissioner) the Commissioner surrendered the warrant with report. Thereafter, the petitioner herein filed an application before the trial court as M.P.No.130/2015 to re-open the evidence and to cross examine the claimant. The learned trial Judge dismissed the said application on 16.2.2015, on the ground that the petitioner was abroad at that time. The said order is under challenge in this proceeding brought under Article 227 of the Constitution of India. The petitioner seeks a direction to the court below to permit him to cross examine the claimant.

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2. The diary extract submitted by the learned trial Judge shows that the affidavit filed by the claimant stands accepted in lieu of examination in chief. Once the affidavit is accepted in lieu of examination in chief, the other side will have the right to cross examine the claimant. Here there is no question of recalling the witness or reopening evidence. I find that the petitioner's request to cross examine the claimant was wrongly disallowed by the trial court. It does not matter whether he is abroad or here. When he is represented by a counsel of his choice, the learned counsel can cross examine the claimant as part of the trial. That right cannot be denied to the respondent facing a claim under section 125 of Cr.P.C. The claimant who has tendered evidence by way of affidavit will have to make herself available for cross examination by the respondent. If the respondent is not allowed to cross examine and the evidence of the claimant stands unchallenged, that evidence will have no value.

3. I find that the petitioner must be given an opportunity to cross examine the claimant, because it is his right. It does not matter whether he is here or abroad. The claimant can be cross

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examine by the petitioner's counsel.

In the result this petition is allowed. The impugned order is set aside, and the court below is directed to permit the petitioner to cross examine the claimant as part of trial.

Sd/-
P.UBAID,
JUDGE.

rkc.