

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

OP (FC) .No. 19 of 2015 (R)

OP 868/2009 of FAMILY COURT, THIRUVANANTHAPURAM

PETITIONER/RESPONDENT:

GERRY DOUGLAS AGED 44 YEARS
S/O LATE K.SAMUEL, KUNNAMPALLIL HOUSE, MULAMPUZHA
PANDALAM PO, PATHANAMTHITTA DIST.
NOW WORKING AS TECHNICAL SPECIALIST AND RESIDING AT KUWAIT
PO BOX 613, SAFAT 13007.

BY ADV. SRI.L.RAJESH NARAYAN

RESPONDENTS/PETITIONER:

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1. SONI GERRY, AGED 42 YEARS
D/O LATE E.O. ANTONY
RESIDING AT ELUVANTHINGAL HOUSE, HOUSE NO.4
MOSQUE LANE, KESAVADASAPURAM, PATTOM P.O.
THIRUVANANTHAPURAM.
 2. SUSAN VARGHESE, AGED ABOUT 58 YEARS
W/O GEORGE VARGHESE, THEKKEPUTHUVELIL HOUSE
CHALAKUZHLY LANE, PATTOM P.O., THIRUVANANTHAPURAM.
 3. LILLY MICHAEL, AGED 75 YEARS
W/O MR. P.V.MICHAEL, HOUSE NO.56/A, MOSQUE LANE
KESAVADASAPURAM, THIRUVANANTHAPURAM.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

acd

OP (FC).No. 19 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1: TRUE COPY OF I.A.NO.2449/2014 IN O.P.NO.868/2009 DATED
2ND DAY OF AUGUST 2014.

EXHIBIT P2: TRUE COPY OF I.A.NO.2448/2014 IN O.P.NO.868/2009 DATED
2ND DAY OF AUGUST 2014.

EXHIBIT P3: TRUE COPY OF I.A.NO.2450/2014 IN O.P.NO.868 2009 DATED
2ND DAY OF AUGUST 2014.

EXHIBIT P4: TRUE COPY OF THE OBJECTION FILED TO EXT.P1 DATED 17.9.14.

EXHIBIT P5: TRUE COPY OF THE OBJECTION FILED TO EXT.P2 DATED
17.9.2014.

EXHIBIT P6: TRUE COPY OF THE OBJECTION FILED TO EXT.P3 DATED
17.9.2014.

RESPONDENT(S) ' EXHIBITS

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NIL.

TRUE COPY

COPY TO JUDGE.

acd

V.K. MOHANAN & P.D. RAJAN, JJ.

O.P.(FC) No.19 of 2015

Dated this the 28th day of January, 2015

JUDGMENT

V.K.Mohanan,J.

The petitioner herein is the respondent in O.P.No.868/2009 on the file of the Family Court, Thiruvananthapuram, which was initiated at the instance of the wife of the petitioner, seeking an order for maintenance, return of gold ornament, money and also for injunction. According to the petitioner, the process of recording evidence in the above case is completed both from the side of the petitioner and the respondent and the matter is now stand posted for arguments. According to the petitioner, from the side of the respondent herein, who is the petitioner in the Court below, two witnesses, who are arrayed herein as

respondents 2 and 3, were examined as PWs 2 and 3 and those witnesses were tutored and hired witnesses of PW1 and with firm determination, those witnesses tendered false evidence on oath in favour of PW1. So, according to the petitioner, those witnesses are liable to be prosecuted for the offence of perjury. Thus, the petitioner herein, who is the respondent therein, filed Exts.P1 to P3 petitions for initiating action for perjury and the present grievance projected by the petitioner is that, though Exts.P1 to P3 petitions are filed, the Court below, without considering the same, proceeding to dispose of O.P.No.868/2009 and therefore, the above O.P.(FC) is filed under Article 227 of the Constitution of India praying inter alia to direct the Family Court to hear and pass orders on Exts.P1 to P3 before commencement and final argument in O.P.No.868/2009 and also for a direction to the Family Court, Thiruvananthapuram to forthwith hear and pass

orders on Exts.P1 to P3, within a time limit to be fixed by this Court.

2. Heard the learned counsel for the petitioner.

3. The prayer in Ext.P1 petition is to enquire into the offences defined under Sections 193, 196, 199, 209, 211, 463 & 471 of IPC as per the provisions of the Section 340 of CrI.P.C. R/w. Section 195B of Cr.P.C. and deal with the Counter petitioner therein in accordance with law for making untrue pleadings in the O.P. and giving false statements, causing wrongful loss and deceiving the Court during the judicial proceeding in the interest of justice. The prayer in the above three petitions are one and the same. The 1st respondent in this O.P.(FC) has filed her objection resisting the prayer put forward by the petitioner in those applications.

4. When the above writ petition came up for consideration, by order dated 20.1.2015, we directed the

Registry to obtain a report from the Presiding Officer of the Family Court, Thiruvananthapuram as to what are the steps taken on receiving Exts.P1 to P3 petitions. By letter dated 24.1.2015, the Presiding Officer reported that "the case is now at the stage of final hearing and no further enquiry is necessary. If it appears to the court that it is just and proper to take further action on the allegation, notice can be issued to the accused after final hearing and a finding can be rendered. No independent enquiry is necessary at this stage since the issue can be appreciated in the right perspective when the case is at the fag end."

5. Having regard to the facts and circumstances involved in this case, it can be seen that the marital relationship between the petitioner and the 1st respondent got strained, which resulted in legal proceedings in the court below and various other litigations are also pending between them. O.P.No.868/2009 is part of such litigation

preferred by the wife of the petitioner. It goes without saying that the finding on the allegation raised by the petitioner through Exts.P1 to P3 has got a bearing, while deciding the main matter before that Court and vice versa also. As no time limit or stage has been fixed in the Code of Criminal Procedure to dispose of a petition filed under Section 340 of Cr.P.C., instead of waisting the judicial time, the Court can consider the matter simultaneously at the time of considering the main matter. Since the case is now posted for argument, the petitioner can address the Court against the acceptance of the evidence on record, if any, against him setting for the grounds raised in the petition filed under Section 340 Cr.P.C and it is for that Court to consider such argument on merit and come to a conclusion that as to whether the evidence adduced in this case on behalf of the respondent is acceptable or not or whether the same can be acted upon or not. If the finding

of the Court below is against the respondent by accepting the argument of the petitioner under Section 340 of Cr.P.C., definitely the Court can take action under Section 340 of Cr.P.C. As per the report, which we indicated earlier, the Presiding Officer has reported that if the circumstances so warranted, action can be taken under Section 340 Cr.P.C. after final hearing and a finding can be rendered.

In view of the above report and the present stage of the main proceedings, we find no merit in this O.P.(FC) and accordingly the same stand dismissed.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

acd

