

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2015/13TH KARTHIKA, 1937

OP (FC).No. 332 of 2015 (R)

PETITIONER(S) :

P.S.DAYANAND AGED 30 YEARS
S/O.SREEDHARAN NAIR, THALAPPOYIL VEEDU, P.O.PUNNATH
KOZHIKKODE-673 614, AVEDANELLER AMSOM, PUNNATH DESOM
KOYILANDY TALUK.

BY ADVS.SRI.P.S.SREEDHARAN PILLAI
SRI.T.K.SANDEEP
SRI.ARJUN SREEDHAR
SRI.ARUN KRISHNA DHAN

RESPONDENT(S) :

N.A.NEETHU
D/O.RAJAN N.A., NALINAM, P.O.ERAVANNUR
KOZHIKKODE, PIN-673 685.

R1 BY ADV. SRI.MANJERI SUNDERRAJ

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
04-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

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O.P(F.C) No.332 of 2015

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Dated this the 4th day of November, 2015

JUDGMENT

Abdul Rehim, J.

The petitioner herein is the husband of the respondent. The petitioner had filed O.A No.941 of 2012 before the Family Court, Kozhikode under Section 12(1)(c) of the Hindu Marriage Act seeking nullity of the marriage existing between the parties. Allegation in the case is that the respondent was in love with one Sri.Deepak before the marriage and even after the marriage she continued the affair with the said person. It is alleged that the respondent used to talk with the said person from her mobile phone No.9946208063 to his mobile phone with number 8086055695. In order to prove such an allegation, the petitioner sought direction from the Family Court to summon the 'call and message' details of the mobile phone of Sri.Deepak, by filing I.A No.349/2013. The petitioner had also filed I.A No.810/2013 to summon the 'call and message' details of mobile No.9946298063, which is the telephone in the name of the respondent's mother, from which it is alleged that the respondent

had contacted Sri.Deepak. The Family Court declined the prayer in both the above said interim applications. Ext.P1 is the order passed in I.A No.810/2013. It is categorically found that, mobile phone No.9946208063 is not in the name of the respondent and it is in the name of Smt.Nalini, W/o Rajan, who is the mother of the respondent. Since the said Smt.Nalini had not authorised the cellular company to supply information regarding the 'call and message' history of that mobile, it is not possible to summon such details from the cellular company. Similarly, I.A No.349/2013 was dismissed for the reason that Sri.Deepak is not a party to the case and that he has not authorised the cellular company to reveal the call history.

2. Subsequently, the 'call and message' details of both the above said mobile phones were produced in a criminal case filed by the petitioner against the respondent, before the Judicial First Class Magistrate Court – II, Perambra. According to the petitioner, the call details produced before the Magistrate Court would reveal that the respondent was constantly contacting Sri.Deepak and was continuing her relationship with him. It is stated that the entries contained in the call records would indicate that the respondent and

Sri.Deepak were contacting each other during odd hours in the night. The petitioner had obtained certified copies of the 'call and message' details of both the telephones and produced them before the Family Court, as documents filed on behalf of him. Thereafter I.A No.247/2015 was filed seeking for issuance of summons to the Nodal Officer, Vodafone Cellular Limited, to be present as a witness for proving the document produced and calling for production of documents indicating the name and address of the 'SIM card' holders of the above said two telephones. But the court below had declined the application stating that I.A Nos.349/2013 and 810/2013 filed for the very same purpose were already dismissed. It is aggrieved by the said order of the Family Court in I.A No.247/2015, copy of which is produced as Ext.P3, this original petition is filed seeking for interference by invoking the supervisory jurisdiction vested under Article 227 of the Constitution of India.

3. Contention of the petitioner is that, the reason for dismissal of the earlier interim applications that the subscribers of the respective mobile phones are not parties to the litigation and that they have not authorised the Cellular Company to reveal the call and message details, will not be applicable in the present

application, I.A No.247/2015. The request for summoning the witness is made under a totally different circumstance. It is only for marking the documents already produced, which are the certified copies of the call and message details. Therefore, the reason mentioned in Ext.P3 is not legally sustainable, is the contention.

4. In the counter affidavit filed by the respondent it is contended that Ext.P3 order does not suffer from any illegality, impropriety or incorrectness. It is contended that the parties who are subscribers of the mobile phones (SIM Card) are not parties in the original petition. Further it is contended that those persons have not authorised to supply such information about their call details. It is contended that there is no change of circumstances after passing Ext.P1 order, and hence the present I.A cannot be allowed. It is also contended that the allegation that certified copies of the call details were produced before the court below is not true and correct and it is to be proved. According to the respondent, such information can be called in evidence only in accordance with provisions of the 'Cyber Law' which is applicable with respect to furnishing of such information.

5. Having considered the rival contentions, this court takes note of the fact that Ext.P3 is a highly cryptic order passed without proper application of mind. Evidently, the reliefs sought for in the earlier applications is to call for the records relating to 'call and message' details of two mobile phones. But the relief sought for in the present application is to summon a witness for the purpose of proving documents which are already produced, which is the certified copy of the 'call and message' details relating to those telephone numbers. Hence we are of the opinion that denial of the relief sought for with respect to summoning of the witness, cannot be justified. However, marking of those documents which are produced before the Family Court, would depend upon the sustainability of the objections which may be raised by the respondent, and will depend upon the relevance and admissibility. Of those documents. But, that is a matter which need to be looked into by the Family Court only at the time of adducing evidence. Request for summoning a witness could not be declined at the threshold merely because the opposite party may object marking of any document. Considering the factual situation and the circumstances emerging, this court is of the opinion that the interim

application filed seeking to issue summons to the witness need to be allowed, subject to liberty of the respondent to object marking of the document or to plead about its non-admissibility.

Therefore the above original petition is hereby allowed and Ext.P3 order passed by the Family Court, Kozhikode in I.A No.247/2015 in O.P No.941/2012 is hereby set aside. The above said I.A is hereby allowed and the Family Court is directed to permit the petitioner to take steps for summoning the witness.

Sd/-
C.K.ABDUL REHIM, JUDGE

Sd/-
MARY JOSEPH, JUDGE

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