

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

OP (FC).No. 395 of 2015 (R)

AGAINST THE ORDER/JUDGMENT IN OP 1775/2014 of FAMILY
COURT,ERNAKULAM DATED 02-02-2015

PETITIONER(S)/RESPONDENT:

SACHIN NARAYANA PILLAI AGED 39 YEARS
S/O.LATE NARAYANA PILLAI, DUKES 13 C
SKYLINE IMPERIAL GARDENS
JAWAHARLAL NEHRU INTERNATIONAL STADIUM ROAD
PALARIVATTOM
KOCHI-682025. OFFICE ADDRESS AT: RIGHT SERVE SOLUTIONS
TRIVENT COURT, K.P.VALLON ROAD, KADAVANTHRA
KOCHI-682020.

BY ADVS.SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH

RESPONDENT(S)/PETITIONER:

ANNU SUSAN GEORGE, AGED 32 YEARS
D/O.DR.GEORGE VARGHESE, 'NADUVILADATH HOUSE
MUTTAMBALAM P.O., KANJIKUZH, KOTTAYAM-686004.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 31-
08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 395 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: TRUE COPY OF THE APPLICATION DTED 20/09/14 IN OP.1775/14 ON THE FILE OF FAMILY COURT, ERNAKULAM.

EXHIBIT-P2: TRUE COPY OF THE APPLICATION O.3822/14 IN O.P.1775/14 ON THE FILE OF FAMILY COURT ERNAKULAM DATED 31/3/15 SUBMTTED BY THE PETITIONER.

EXHIBIT-P3: TRUE COPY OF THE MEDICAL REPORT ISSUED BY DR.S.D.SINGH OF THE KIMS HOSPITAL, COCHIN DATED 12/1/2015.

EXHIBIT-P4: THE TYPE WRITTEN COPY OF THE ORDER DATED 2/2/15 IN O.P.1775/14 OF FAMILY COURT ERNAKULAM.

EXHIBIT-P5:THE TRUE COPY OF THE PSYCHIATRICT REPORT SUBMITTED BY DR.C.J.JOHN DATED 09.04.2015.

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPYT

PS TO JUDGE

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

OP(FC) No. 395 of 2015

Dated this the 31st day of August, 2015

JUDGMENT

Abdul Rehim,J.

In this original petition filed under Article 227 of the Constitution of India, the petitioner is seeking interference of this court to set aside Ext.P4 order of the Family Court, Ernakulam in OP.No.1775/14, and also to declare that Ext.P5 psychiatric report submitted before the Family Court in the said case as illegal and arbitrary, by invoking its supervisory jurisdiction.

2. The petitioner and the respondent herein are husband and wife. Marriage took place in the year 2010. The parties belonged to different religion and the marriage was solemnised after the petitioner had converted into Christianity. Two issues were born out of the wedlock. The respondent filed OP.No.1775/14 seeking dissolution of the marriage, alleging cruelty on the part of the petitioner. The said petition was resisted inter alia contending that, the respondent is suffering

from psychological disorders. It is stated in this original petition that, the Family Court while considering the matter had ordered for psychiatric evaluation of the respondent by Dr. S.D.Singh, KIMS Hospital, Ernakulam. Ext.P3 is the Medical Report issued by the said Doctor, on 12.1.2015. In Ext.P4 order the Family Court again directed the respondent herein to go for a psychiatric counselling before Doctor C.J.John, Medical Trust Hospital, Ernakulam and to get a report from the said Doctor. Accordingly the respondent appeared before the said Doctor and after his evaluation Ext.P5 report was submitted before the Family Court. It is pointed out by the petitioner that Exts. P3 and P5 reports are contradictory in nature. It is contended that the Family Court went highly erred in calling for a 2nd report without setting aside Ext.P3 report. Hence the petitioner is approaching this court aggrieved by Ext.P4 order and the consequential Medical Report obtained as per Ext.P5.

3. Learned counsel for the petitioner had placed heavy reliance on provisions contained in Order 26 Rule 12 of CPC to contend that there occurred serious procedural irregularity in the Family Court ordering a second psychiatric evaluation, without

setting aside the earlier report. Hence this OP is filed seeking reliefs as mentioned above.

4. Heard; counsel for the petitioner. Ext.P3 is a confidential interim report submitted by the psychiatrist attached to the KIMS hospital, Kochi. From Ext.P3 it is evident that the Family Court had directed both the parties to appear before the psychiatrist for the purpose of mental health evaluation. After a sequence of consultations made by the clinical psychologist, the respondent was examined by the psychiatrist and a detailed report is submitted. In the recommendations contained in Ext.P3 it is observed by the psychiatrist that, there exists behavioral changes which could be an early state of mood disorder, in the respondent. However recommendation of the psychiatrist is for consultation by a panel of 3 psychiatrist for the purpose of further investigation and observations of the couple for 2 to 3 weeks, preferably in a hospitalised state, the case being a medico-legal one. It is also recommended for more psychotherapeutic sessions with pharmacotherapy. But after receipt of Ext.P3 report, the Family Court observed that the respondent herein was not willing to go for such further

investigation as she had raised an allegation of bias against Dr. S.D.Singh. Therefore the Family Court directed both the parties to go for psychiatric counselling before another Doctor in another hospital. Evidently the said order was issued on 2.2.2015. The petitioner had never chosen to challenge such an order. On the other hand, he along with the respondent appeared before the 2nd hospital and had undergone psychiatric counselling. The 2nd report of psychiatric counselling was submitted on 9.4.2015. Only when the petitioner realised that the report regarding behavioral observations of the respondent is not in his favour, he had chosen to approach this court by challenging the said report and also the order passed by the Family Court as early as on 2.2.2015.

5. Prima facie we are not satisfied that there exists any circumstance for invoking supervisory jurisdiction vested on this court for interfering with the orders impugned. Order 26 Rule 12 of CPC will not attract in the case at hand, because Ext.P3 or Ext. P5 report will not come within the purview of a Commission Report. In the case at hand, the parties were referred by the Family Court to undergo psychiatric counselling before

proceeding with the trial of the original petition. When an interim report as per Ext.P3 was obtained, recommending for further evaluation, the respondent raised an allegation of bias against the Doctor who had issued such a report. We do not find anything wrong in the Family Court directing the parties to appear before another Doctor to pursue the psychiatric counseling. Evidently, such attempt was made by the court below only to explore possibility of an amicable settlement of the disputes between the parties. We do not find any erroneous exercise of jurisdiction vested on the court below in this regard. We are also not convinced with the contention that both the reports are contradictory of each other. However, being reports submitted to the court in the course of counseling, interference with Exts. P3 and P5 is not at all warranted. If the petitioner has got any case that the respondent is suffering from any mental disorder to the extent of restraining marital cohabitation, it is left open to him to bring the said fact in evidence during the stage of trial of the case, through appropriate steps. It is for the Family Court to consider such request if any made during the appropriate stage of the trial of the case.

6. Under the above mentioned circumstance, we are of the considered opinion that the OP(FC) deserves no merit and the same is liable to be dismissed. Accordingly, the OP(FC) is hereby dismissed, subject to observations contained hereinabove.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

