

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 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

OP (FC).No. 418 of 2015 (R)

O.P 534/2013 OF FAMILY COURT, TIRUR

PETITIONER(S)/1ST RESPONDENT:

**K.SALINI, AGED 32 YEARS,
D/O.VELAYUDHAN, KAVALANGATTU HOUSE, PANAMBAD DESAM,
P.O.PURANG, MARANCHERY VILLAGE, PONNANI TALUK,
MALAPPURAM DISTRICT, PIN - 679 584.**

**BY ADVS. SRI. P.G.SURESH
SRI. RAJAN VISHNURAJ
SRI. G.SUDHEER (THURAVOOR)
SRI. V.HARISH**

RESPONDENT(S)/PETITIONER - 2ND RESPONDENT:

- 1. SUDHEER T.K., AGED 49 YEARS, S/O.ARUMUGHAN
REPRESENTED BY THE POWER OF ATTORNEY HOLDER,
T.K.SURENDRAN S/O.ARUMUGHAN, THEKKEKKARA HOUSE,
PANAMBAD DESAM, P.O.PURANG, MARANCHERY VILLAGE,
PONNANI TALUK, MALAPPURAM DISTRICT, PIN - 679 584.**
- 2. SHANAVAS KOYIKKAL MADATHIL,
AGED ABOUT 31 YEARS, S/O. IBRAHIMKUTTY,
P.O.ADINADU NORTH, KARUNAGAPPALLI,
KOLLAM DISTRICT, PIN-690 542.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 07-09-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT. P1 - THE TRUE COPY OF THE ORIGINAL PETITION DATED 25.03.2013 FILED BY THE 1ST RESPONDENT HEREIN BEFORE THE HONOURABLE FAMILY COURT, TIRUR AS O.P.NO.534/2013
- EXT. P2 - THE TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT HEREIN AS I.A. NO.1281/2014 IN O.P. NO.534/2013 BEFORE THE HONOURABLE FAMILY COURT, TIRUR DATED 25.08.2014
- EXT. P3 - THE TRUE COPY OF THE PETITION FILED BY THE 1ST RESPONDENT HEREIN AS I.A. NO.1288/2014 IN O.P. NO.534/2013 BEFORE THE HONOURABLE FAMILY COURT, TIRUR DATED 25.08.2014
- EXT. P4 - THE TRUE COPY OF THE COMMON ORDER DATED 04.06.2015 PASSED IN I.A. NO.1281/2014 AND I.A.NO.1288/2014 IN O.P. NO.534/2013 BY THE HONOURABLE FAMILY COURT, TIRUR.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

O.P.(FC) No. 418 of 2015

Dated this the 7th day of September, 2015

JUDGMENT

C.K. ABDUL REHIM, J.

The 1st respondent in O.P. No.534/2013 on the files of the Family Court, Tirur is the petitioner herein. Respondents herein are respectively the petitioner and the 2nd respondent in the said original petition.

2. This original petition is filed invoking supervisory jurisdiction vested on this Court under Article 227 of the Constitution of India to set aside Ext.P4 order passed by the Family Court in I.A. Nos. 1281/2014 and 1288/2014 in O.P. No.534/2013. The original petition before the Family Court was filed by the 1st respondent herein seeking dissolution of the marriage existed between the petitioner and the 1st respondent, under Section 13(1) of the Hindu Marriage Act, alleging adultery against the petitioner with the 2nd respondent herein.

3. The 1st respondent herein filed Ext.P2 interim

application before the Family Court seeking direction to the All India Radio, Kozhikode Station to collect sound samples of petitioner and the 1st respondent herein in Compact Disks (CDs) which cannot be re-written. Ext.P3 is another interim application filed seeking direction from the Family Court to send the sound samples so collected for conducting 'voice identification test' at the Forensic and Scientific laboratory, Thiruvananthapuram. The court below considered both the interim applications together and a common order was issued allowing the request for collecting sound samples of the petitioner and the 1st respondent by the All India Radio, Kozhikode Station, for which the parties are directed to appear before the Radio Station. The All India Radio Station, Kozhikode was directed to produce the sound samples recorded in the CDs in sealed cover before the Family Court.

4. Contention of the petitioner is that, the impugned order was issued without considering the objections filed in I.A. No. 1281/2014. It is evident that, before passing the impugned order, the Family Court had contacted the All India Radio, Kozhikode Station in order to ascertain about the facilities

available there for collecting sound samples. A report filed by the radio station had indicated that there is facility available at the said station for collecting sound samples. It is on that basis the Court directed the parties to appear at the radio station for recording their sound samples. Based on the contention raised by learned counsel for the petitioner, we made a perusal on the copy of the objections filed by the petitioner in I.A. No.1281/2014. The main contention raised is that, there is no procedure available under the existing law for collecting sound samples. The purpose for which collection of the sound samples was requested, was also questioned. According to the petitioner, the interim applications were filed only to create a suspicion against chastity of the petitioner, without there being any fruitful results to be obtained from conducting such test.

5. But, we do not find any specific objection raised with respect to maintainability of the petition, based on any statutory provisions or otherwise. Learned counsel for the petitioner contended that, there is no provision under Section 45 of the Indian Evidence Act, 1872 to seek expert opinion with respect to

identity of sound. But it is evident from the order impugned in this original petition that the Family Court had only directed collection of sound samples. It will be left open to the petitioner to raise all contentions if the court proceed further to take expert opinion from the Forensic and Scientific Laboratory.

6. Learned counsel also contended that, the laboratory has no fool proof mechanism to ascertain exact identity of the sound. We are of the opinion that all such contentions can be raised before the Family Court when it considers the question of granting relief sought for in I.A. No.1288/2014, in which direction is sought for to collect expert opinion from the Forensic and Scientific Laboratory.

7. Needless to observe that if any such objection is raised by the petitioner, the Family Court will consider such objections and shall pass appropriate orders. Since such an opportunity is available to the petitioner, we are of the opinion that there is no prejudice caused to the petitioner in collecting the samples.

8. Therefore, the above original petition is disposed of by reserving liberty to petitioner to raise all challenges before the

Family Court, when it considers the question of getting expert opinion regarding identity of the sound from the Forensic and Scientific Laboratory. It is for the Family Court to consider any such objection if raised against I.A. No. 1288/2014, before the sending the samples for getting any expert opinion.

Sd/-
C.K. ABDUL REHIM
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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