

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. 470 of 2015 (R)

AGAINST THE ORDER IN OP 472/2011 of FAMILY COURT,ERNAKULAM DATED
10-08-2015

PETITIONER(S) /PETITIONER:

VINITHA K.V. AGED 28 YEARS
W/O.VIJAYANANDHA PRABHU, SHREEVAIBHAVAM
CHEERAKKADA TEMPLE ROAD, ALUVA.

BY ADVS.SMT.K.S.SUMITHA
SMT.M.M.JASMIN

RESPONDENT(S) /RESPONDENT:

VIJAYANANDA PRABHU
S/O.UMANANDA PRABHU
DEVASWAM PARAMBIL BHAGAVATHHOUSE, SANKARADY ROAD
CHERAI.

R1 BY ADV. SRI.T.M.RAMAN KARTHA
ADV. SMT.SYAMA MOHAN

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

OP (FC).No. 470 of 2015 (R)

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P-1: TRUE COPY OF IA.1430/2012 IN OP 472/2011 ON THE FILES OF
FAMILY COURT, ERNAKULAM.

EXT.P-2: TRUE COPY OF THE REPORT GIVEN BY THE DOCTOR IN SPECIALIST
HOSPITAL, ERNAKULAM DATED 8.11.2013

EXT.P-3: TRUE COPY OF IA 1192/2015 ALONG WITH WITNESS LIST ON THE
FILES OF FAMILY COURT, ERNAKULAM.

EXT.P-4: TRUE COPY OF IA 2961/2015 IN OP 472/2011 ON THE FILES OF
FAMILY COURT, ERNAKULAM.

EXT.P-5: CERTIFIED COPY OF THE ORDER IN IA 2961/2015 DATED 10.8.2015
IN OP 472/2011

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A TO JUDGE

vdv

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

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O.P(F.C) No.470 of 2015

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Dated this the 4th day of November, 2015

JUDGMENT

Abdul Rehim, J.

Ext.P5 order passed by the Family Court, Ernakulam through which I.A No.2961/2015 filed by the petitioner herein in O.P No.472/2011 was dismissed, is under challenge in this original petition which is instituted by invoking the supervisory jurisdiction vested on this court under Article 227 of the Constitution of India.

2. The petitioner herein had filed O.P No.472/2011 before the Family Court, Ernakulam against the respondent herein, seeking for restitution of conjugal rights. Evidently the parties are living separated due to matrimonial discord and various other litigations are also pending between them. The respondent entered appearance in the case and the Family Court had referred the matter for counselling. During pendency of the case before the counsellor, the petitioner filed Ext.P1 application as I.A No.1430/2012 seeking direction for directing the parties along with the mother of the respondent to undergo counselling before a qualified Psychologist/Psychiatrist and to obtain a report. The Family Court

had allowed the above application on 20.04.2013 and referred the parties to undergo counselling before a Psychiatrist. Ext.P2 is the report submitted by the Clinical Psychologist to whom the parties are referred for undergoing psychological counselling. The psychological assessment report submitted in this regard is as follows:

“Both parties attended in Couple Therapy sessions and in individual Counselling sessions. Severe marital discord was found. Mrs.Vinitha K.V aged 24 is observed as a person with high legal prejudiced behaviour and with poor marital adjustment skills. Her accusations towards husband and in-laws were observed as psychologically irrelevant and she is with strong defense mechanisms. Reality orientation therapy was given to the wife. Husband Mr.Vijayanandaprabhu aged 31, is not at all willing for reconciliation. Family therapy session was given to husband's mother and father. Re union possibility is not observed in this case.”

3. Thereafter, trial commenced before the Family Court and the petitioner herein was examined as a witness. During her cross-examination, the Family Court permitted the counsel for the respondent to mark Ext.P2 report. According to the petitioner, then only the petitioner came to know about contents of Ext.P2 report. Since the petitioner felt that the report contains certain adverse

remarks against her, she filed I.A No.1192/2015 seeking to summon the Psychiatrist who had issued Ext.P2 report, to give evidence before the court below. But the Family Court had dismissed I.A No.1192/2015 through an order dated 10.07.2015 observing that,

“Respondent has not so far gave evidence in the case. Hence this application is dismissed.”

4. Based on dismissal of I.A No.1192/2015, the petitioner filed the present application before the Family Court as I.A No.2961/2015 (Ext.P4) seeking direction to the parties in the case to undergo counselling before a Psychiatrist, practicing in the Government Hospital, in order to get a second opinion in the matter. But the Family Court on consideration dismissed the application through Ext.P5 order finding that numerous counsellings were already done including expert counselling based on application of the parties and therefore the present application filed at the stage when the evidence is being recorded is only an attempt to prolong the matter. It is aggrieved by Ext.P5, the petitioner is approaching this court.

5. Contention of the petitioner is that since the court below had permitted marking of Ext.P2 report, the petition filed seeking for summoning the doctor as a witness, ought to have been allowed. Since such a request made by the petitioner was not allowed, the court ought to have considered the application filed seeking directions for reference of parties to a Psychiatrist for obtaining a second opinion. It is contended that the denial of the application for summoning the Doctor as well as the denial of the request for directing a second counselling by a Psychiatrist, will prejudice the contentions of the petitioner in the original petition, in view of the fact that Ext.P2 report was allowed to be marked in evidence.

6. On the other hand, in a counter affidavit filed by the respondent it is contended that, the stage of counselling was over and the parties have undergone six sessions of counselling in the Family Court and different sessions before the Psychologist. Therefore there is no necessity for having a further counselling before any Psychiatrist. It is also contended that the respondent had never submitted that he is prepared for a reunion, because the marital tie had been broken irretrievably beyond any scope of

reunion. Therefore no purpose would be achieved by referring the parties to a second counselling before a Psychiatrist, is the contention.

7. While considering the rival contentions, we take note of the fact that the specific relief sought for in Ext.P4 application is to refer the parties for a second counselling before a Psychiatrist practicing in a Government hospital. As rightly observed by the Family Court the stage of counselling is over and the parties have undergone various counselling before the counsellor as well as before the Psychologist. Moreover trial had already commenced and examination of the parties are going on. Therefore no purpose could be achieved by referring the parties for a second counselling and the application submitted by the petitioner seeking such relief cannot be allowed.

8. But it is pertinent to note that, the Family Court had permitted marking of Ext.P2 Report during the cross examination of the petitioner. Admittedly, Ext.P2 report was obtained on the basis of order passed by the Family Court in I.A No.1430/2012 copy of which is produced as Ext.P1. Evidently the said application was submitted at a stage when counselling was going on and the relief

sought for in that interim application was to direct the parties in the case along with the mother of the respondent to undergo counselling before a qualified Psychologist. Hence the reference made by the court can be considered only for the purpose of an expert counselling. Therefore Ext.P2 Report submitted by the expert counsellor can only be considered as a report of the counsellor. Going by Rule 29 of the Family Court (Kerala) Rules 1989 such a report has got confidentiality. It provides that the report prepared by the counsellor shall be treated as confidential and the counsellor shall not be called upon to disclose such report to any court, except with the consent of both the parties. Further under Rule 30 it is provided that the counsellor shall not be permitted to give evidence in any court in respect of the information, statement, notes or report referred to in Rule 29. Therefore it is doubtful as to whether Ext.P2 report can be marked in evidence and as to whether the expert counsellor can be summoned as a witness. It is stated that Ext.P2 report was marked by the counsel appearing for the respondent while cross examining the petitioner. Under such circumstances it cannot be construed that the petitioner had consented for disclosure of such report

before the Family Court. Therefore the admissibility of Ext.P2 report in evidence needs consideration by the Family Court, based on the relevant Rules quoted above. Needless to observe that, if Ext.P2 report would come within the ambit and scope of a report submitted by an expert counsellor, it cannot be made use of in evidence without consent of the parties for disclosure of such report. The above matters need to be considered by the Family Court while disposing the case and while appreciating the evidence on record.

9. Since we are not inclined to interfere with Ext.P5 order, which is impugned in this original petition, the above original petition is dismissed, subject to the observations made herein above regarding admissibility of Ext.P2 report in evidence.

Sd/-
C.K .ABDUL REHIM, JUDGE

Sd/-
MARY JOSEPH, JUDGE