

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 7TH DAY OF OCTOBER 2015/15TH ASWINA, 1937

O.P (F.C).No. 474 of 2015 (R)

**AGAINST THE ORDER IN O.P. NO. 2401/2014 OF FAMILY COURT,ERNAKULAM
DATED 11-08-2014**

PETITIONER(S):

- 1. ANOOPA MARY, AGED 30 YEARS,
W/O. JOHN CHRISTO, NANATT HOUSE,
COCHIN CORPORATION 38/2260, SREEVILASAM ROAD,
PADIVATTOM, EDAPPALLY, KOCHI 24.**
- 2. PHILOMINA MARTIN, AGED 65 YEARS,
W/O. M.V. MARTIN, NANATT HOUSE, SREEVILASAM ROAD,
COCHIN CORPORATION 38/2260, PADIVATTOM,
EDAPPALLY, KOCHI 24.**

**BY ADVS. SRI. JAGAN ABRAHAM M.GEORGE
SRI. P. JAYABAL MENON
SMT. K.J. GISHA**

RESPONDENT:

**JOHN CHRISTO, AGED 35 YEARS,
S/O. ANDREWS, THEKKE PALAKKAL HOUSE,
NEAR ST.GEORGE CHURCH, EDAPPALY, KOCHI - 24.**

**THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
07-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP (FC).No. 474 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT. P1: TRUE COPY OF THE G(O.P) NO.2401/2014.

**EXT. P2: TRUE COPY OF THE IMPUGNED INTERIM ORDER O.P.NO.2401/14
DATED 11/8/2015 OF THE HON'BLE FAMILY COURT, ERNAKULAM.**

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

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

O.P (FC). No. 474 of 2015

Dated this the 7th day of October, 2015

JUDGMENT

C.K. ABDUL REHIM, J.

Petitioners in this original petition are the respondents in O.P. No. 2401/2014 on the files of the Family Court, Ernakulam. The respondent herein is the petitioner before the court below. Case before the Family Court was instituted by the respondent herein under Section 12 of the Guardians and Wards Act, seeking permanent custody of two minor children namely Angel Maria, aged 5 years and Christy Maria Antonio, aged one year. The children were born out of wedlock between the 1st petitioner herein and the respondent. The 2nd petitioner is the maternal grandmother of the minor children.

2. The Family Court passed Ext.P2 interim order in O.P.No.2401/2014 making arrangements for having the

respondent access with the elder child on all second Saturdays from 10:30 a.m till 4:00 p.m in the court premises. Ext.P2 order was passed on the basis of interaction made by the court below with the father, mother and the child, in the chamber of the learned Judge. It is noticed in the said order that, the child had expressed her displeasure to go with the father. However, court below found that the father is entitled to have access to the child during day time. It is observed that both the father and mother have mutually agreed to provide access of the child to the respondent on 15th August and 16th August from 2:30 p.m to 5:00 p.m, in the court premises. It is also mutually decided to provide access of the child on all second Saturdays as mentioned above.

3. The petitioners are approaching this court seeking to set aside Ext.P2 order passed by the Family Court, by

invoking the supervisory jurisdiction vested in this court under article 227.

4. Contention of the petitioners are that, during the time when the 1st petitioner was taking rest based on her second delivery, the respondent used to take the elder child to his house for one or two days during school holidays. But the child was never happy to be with the respondent. While so, when the authorities of the child line made a visit to the school where the elder child is studying, on interaction with the child they found that she was sexually abused by her father. Subsequently, on the basis of information furnished by the authorities of the child line, a complaint was registered before the police authorities and on that basis a criminal case was registered against the respondent herein alleging offences punishable under Section 354 of the Indian Penal Code r/w Section 10 of the Protection of Children from

Sexual Offences Act, 2012.

5. According to the petitioners, the respondent had obtained the impugned interim order without revealing the above said facts. It also contended that the petitioners have agreed for the said arrangement, only because of the fear that the respondent will otherwise abuse and harass the petitioners. Further it is stated that, at the time when the Family Court had passed the impugned order, the petitioners were not in a position to take any rational decision in the matter. It is also disputed that the petitioners have consented for the access to the child from 10:30 a.m till 4:00 p.m. Based on such contentions the petitioners are seeking to cancel the arrangements for access allowed to the respondent through Ext.P2 order.

6. This court is of the considered opinion that the above original petition is totally misconceived. Jurisdiction

vested on this court under Article 227, which is basically supervisory in nature, can be invoked only to interfere with an order passed by the court below, if there is any gross irregularity committed by the courts, which is resulting in total miscarriage of justice. The jurisdiction can only be sparingly used only when there is a totally erroneous exercise of jurisdiction vested on the court below or when the court had passed any order contrary to any of the relevant statutory provisions.

8. But in the case at hand, it is evident from the Ext.P2 order that the arrangement was made based on a mutual agreement between the parties. If the petitioners have got a case that there was no such consent or agreement from their part, it is for them to seek appropriate remedy before that court itself, for reviewing or modifying the order. On the other hand if it is the case of the

petitioner that the order is liable to be cancelled on the basis of any factual situation as enumerated above, it is for the petitioners to bring the same to the notice of the court below and to seek modification of the arrangement, based on such developments which could not be brought to notice of the court at the time of passing of the order. Since those aspects were not the issues agitated or considered before the court below, this court finds no fault with the court in passing the consented order.

9. Under the above mentioned circumstances this court finds no reason to interfere with Ext.P2 order. Hence the writ petition reserves no merit and the same is accordingly dismissed.

10. However, it is made clear that the above judgment will not stand in the way of the petitioner approaching the Family Court seeking modification of the

interim arrangement contained in Ext.P2 order, on the basis of any relevant facts which could not be brought to notice of that court or on the basis of any change of circumstances.

Sd/-
C.K. ABDUL REHIM
JUDGE

Sd/-
MARY JOSEPH
JUDGE

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