

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 22ND DAY OF SEPTEMBER 2015/31ST BHADRA, 1937H

WP(C).No. 9845 of 2015 (E)

PETITIONER:

SAFERNAS K., S/O. MELAPILATHOTTATHIL
JAMAL & KANDIYIL NOORUNNISA,
KANDIYIL HOUSE, NEAR KARUNARAM
AUP SCHOOL, NANMINDA P.O., BALUSSERY
KOZHIKODE DISTRICT.

BY ADVS.SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS:

1. CORPORATION OF CALICUT, CALICT,
REPRESENTED BY THE SECRETARY.
2. MELAPILATHOTTATHIL JAMAL,
S/O NADUVILEVEETIL KUNHUTTY,
CHEEKILODEP.O., KAKKOOR, KOZHIKODE.

R2 BY ADV. SRI.K.M.FIROZ
R2 BY ADV. SMT.M.SHAJNA
R2 BY ADV. SRI.S.KANNAN
R1 BY ADV. SRI.K.D.BABU,SC,KOZHIKODE CORPORATION

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 : TRUE COPY OF THE ORDER DATED 28.11.1994 PASSED BY THE FAMILY COURT, KOZHIKODE IN M.C. NO.461/1992
- EXHIBIT P2 : TRUE COPY OF THE ORDER DATED 05.7.2007 PASSED UB CMP NO. 753/2004 IN MC 461/1992 ON THE FILE OF THE FAMILY COURT, KOZHIKODE
- EXHIBIT P3 : TRUE COPY OF THE ,AFFIDAVIT DATED 29.9.2012 SUBMITTED BY KANDYIL NOORUNNISA BEFORE THE RESPONDENT NO.1
- EXHIBIT P4 : TRUE COPY OF THE INTIMATION DATED 25.6.2013 ISSUED BY THE RESPONDENT NO.1
- EXHIBIT P5 : TRUE COPY OF THE S.S.L.C. CERTIFICATE ISSUED TO THE PETITIONER

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE.

V. CHITAMBARESH, J

WP(C) NO. 9845 OF 2015

Dated this the 22nd day of September, 2015

JUDGMENT

Then the second respondent is the father of the petitioner has been conclusively found in Ext.P1 order on a petition filed under Section 125 of the Code of Criminal Procedure. The said order has been affirmed in Crl.R.P. No. 348/1995 by this court and enhancement of maintenance granted later by Ext.P2 order. The power of the court to incidentally decide the question of paternity in the proceedings for maintenance has been recognised in **Alexander C.C. Vs. Jacob Antony Palakkathadathi @ Amith and another [2012 (2) KHC 847]** and **Devadas Vs. Gopalakrishnan [2014(4) KLT 201]**.

2. It is ofcourse true that the proceedings of the court granting maintenance under the Code of Criminal Procedure is summary in nature and not binding on the civil court. It would mean that the second respondent is free to move the civil court for appropriate reliefs notwithstanding the finding in Exts.P1 and P2 orders. That is the ratio of the decisions in

WP(C) No. 9845/2015

S. Sethurathinam Pillai Vs. Barbara alias Dolly Sethurathinam [1971(3) SCC 923] and Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit and another [1999(7) SCC 675].

3. The first respondent Corporation cannot decline a birth certificate to the petitioner showing the second respondent as the father of the petitioner. This is so in the wake of Exts.P1 and P2 orders and the absence of any verdict by the civil court. I quash Ext.P4 order of the first respondent declining the request of the petitioner for a birth certificate indicating the second respondent as the father of the petitioner.

4. I direct the first respondent to issue the birth certificate to the petitioner showing the name of the second respondent as his father. The same shall be done within a period of one month from the date of receipt of a copy of this judgment.

The Writ Petition is disposed of. No costs.

**V. CHITAMBARESH
JUDGE**

ncd