

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 16350 of 2015 (P)

PETITIONER :

VIVAN VARGHESE,
S/O.N.C.VARGHESE, KP 10/837C,
CONVENT LANE, PALLIVILLA, VATTAPARA P.O.
TRIVANDRUM-28. (*CORRECTED)

*NAME OF THE PETITIONER VIVAN VARGHESE IS CORRECTED AS
VIVIAN VARGHESE AS PER ORDER IN IA NO. 7201/2015 DATED 8/6/2015.

BY ADVS.SRI.SUMAN CHAKRAVARTHY
SMT.BREJITHA UNNIKRISHNAN

RESPONDENT(S) :

1. THE STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF TAXES AND REGISTRATION
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. THE INSPECTOR GENERAL OF REGISTRATION,
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION, VANCHIYOOR
THIRUVANANTHAPURAM-695 035.
3. THE MARRIAGE OFFICER AND SUB REGISTRAR,
KARAKULAM, CHEKKAKONAM P.O.
THIRUVANANTHAPURAM-695 564.

R1 TO R3 BY GOVT. PLEADER SRI. BIJU MEENATTOOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Mn

...2/-

WP(C).No. 16350 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT.P1 TRUE COPY OF THE PASSPORT OF THE PETITIONER.
EXT.P2 TRUE COPY OF THE CERTIFICATE DATED 9/10/2014.
EXT.P3 TRUE COPY OF THE ONLINE APPLICATION.
EXT.P4 TRUE COPY OF THE REJECTION LETTER DATED 29/5/2015 ISSUED BY
 THE 3RD RESPONDENT ALONG WITH THE CIRCULAR DATED
 20/10/2014.
EXT.P5 TRUE COPY OF THE JUDGMENT DATED 11/3/15 IN WP 1946/15.
EXTR.P6 TRUE COPY OF THE JUDGMENT IS REPORTED IN 2001(1) KLT 578.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. VINOD CHANDRAN, J

W.P.(C).No.16350 of 2015-P

Dated this the 08th day of June, 2015

J U D G M E N T

The petitioner, an Indian citizen, desires to enter into a marriage with one Satu Anniina, who is a Finnish citizen. The petitioner, residing under the jurisdiction of the 3rd respondent, made an application for contracting the marriage under the Special Marriage Act, 1954. An objection was raised by the 3rd respondent, allegedly on the ground that the marriage is intended to be entered into with a Finnish citizen and, hence, the provisions of the Special Marriage Act, 1954 cannot be invoked.

2. In fact, the said issue was already considered by this Court in *Rajeev v. State of Kerala* [2001 (1) KLT 578],

which relied on a decision of High Court of Himachal Pradesh in Marian Eva v. State of Himachal Pradesh [AIR 1993 Himachal Pradesh 7]. This Court categorically found that the Special Marriage Act does not contain any prohibition for solemnisation of the marriage, if one of the parties is a foreigner. Another learned Single Judge of this Court also found to the same effect in Exhibit P5 judgment.

3. A reading of the provisions of the Special Marriage Act would also indicate that, Section 4 contemplates, marriage between “any two persons” to be solemnized under the Act; if the conditions specified therein are fulfilled. To satisfy the officer of the conditions stated therein, the intending bride has produced Ext.P2

issued by the Local Register Office of the West Uusimaa at Finland. The status of the said person is shown as single and it is also specifically declared that according to Finnish law there is no impediment to the proposed marriage. It was on the strength of the above document that Ext.P3 application was given by the petitioner herein to register the marriage.

4. On the strength of public notice bearing No.R.R.6/23638/2014 dated 21.10.2014 produced along with Ext.P4 the learned Government Pleader would seek to support the rejection made by the 3rd respondent. The learned Government Pleader contends that there is no Marriage Officer appointed by the Government of India in the Embassy of India at Finland and there is no provision

for sending a communication as required under sub-section (3) of Section 6 of the Act.

5. A reading of the said notice would indicate that as per the Special Marriage Act, 1954 diplomatic and consular officers of the Embassies of India, abroad were appointed as Marriage Officers under the Special Marriage Act. The opinion of the Government expressed in Ext.P4 is that on a foreign citizen seeking registration of marriage with an Indian citizen, within the territories of India, the Government could get confirmation on the status of such foreign citizens from such Marriage Officers appointed in the Embassy. However, by introduction of Foreign Marriage Act, 1969, the provision for making Rules with respect to the diplomatic and consular officers and others

as provided in Section 50 of the Act of 1954 was taken away. In such circumstance, there are no marriage officers as of now appointed by the Government of India, abroad. It was in such circumstance that now the public notice at Ext.P4 was issued, by which it is indicated that the Government is endeavouring to make suitable amendments, to facilitate the marriage of Indian citizens with foreign citizens within the territories of India.

6. Essentially a marriage cannot be kept in abeyance only by reason of such law having not been introduced. Then Foreign Marriage Act, 1969 is: “An Act to make provision relating to marriages of citizen of India outside India”. Here the petitioner, an Indian citizen intends a marriage with a foreigner within the territory of

India. Further in Ext.P4 public notice, the decision in *Rajeev v. State of Kerala* [2001 (1) KLT 578], produced as Ext.P6 has been noticed. The declaration in the aforesaid decision remains as such even now, as per the existing law, being the Special Marriage Act; section 6 of the Act, requires that when either of the parties to an intended marriage is not permanently residing within the local limits of the marriage officer, then the marriage officer of the district in which the other party has the residence should be informed of the marriage. This would operate only within the territories of India. The foreign citizen is not residing within India.

7. The public notice proceeds on a completely wrong premise. The absence of a provision, for enabling

Government of India to appoint Marriage Officers in its embassies abroad only disables an Indian citizen residing abroad from entering into a marriage in the Indian Embassy of that country in which he resides. Also if an Indian citizen residing abroad enters into a marriage, within the territories of India, then probably there would be a requirement of sending the intimation to the Marriage Officer appointed in the Embassy at the place of residence of such Indian citizen to ensure that he does not enter into another marriage. But in the context of there being no Marriage Officers appointed, there can be no marriage contracted at the Embassy. (The reference to territory of India in this judgment is to the territories within its physical boundaries as distinguished from the Embassy in

a foreign land.)

8. That is not the issue which has to be considered at present. A foreign citizen seeks to enter into a marriage with an Indian citizen within the territories of India. The foreign citizen has produced a document by which her status is clearly stated to be single. The application has been made by an Indian Citizen, the petitioner; who has permanent residence within the jurisdiction of the 3rd respondent. The Marriage Officer even if appointed in the Embassies abroad, would have no authority to conduct the marriage of a citizen of that country; unless it be contracted with an Indian Citizen.

9. In such circumstance, the application of the petitioner at Ext.P3 shall be accepted and notice shall be

given by the 3rd respondent as required under the Act and the petitioner shall be permitted to contract the marriage as intended by him which shall be solemnised by the 3rd respondent as per the provisions of the Special Marriage Act.

The Writ petition is allowed.

Sd/-
K.VINOD CHANDRAN
Judge.

jma

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P.A to Judge