

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WP(C).No. 16893 of 2015 (J)

PETITIONER :

**SANDHU SIMON, AGED 24,
D/O. SIMON, AGASALAYIL HOUSE, KEEZHOOR P.O.,
MULAKKULAM, KOTTAYAM DISTRICT, PIN - 686 605.**

BY ADV. SRI.JACOB E. SIMON

RESPONDENT(S) :

- 1. THE SUB REGISTRAR/ MARRIAGE OFFICER
SUB REGISTRAR OFFICE, THALAYOLAPARAMB
THALAYOLAPARAMB P.O., KOTTAYAM DISTRICT, PIN - 686 605.**
- 2. INSPECTOR GENERAL OF RGISTRATION,
VANCHIYOOR, THIRUVANAMTHAPURAM, PIN - 595 035.**
- 3. THE STATE OF KERALA
REPRESENTED BY PRINCIPAL SECRETARY TO GOVERNMENT
TAX (REGISTRATION) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM, PIN-695 001**

R1 TO R3 BY SR. GOVT. PLEADER SMT. C.K. SHERIN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

Mn

...2/-

WP(C).No. 16893 of 2015 (J)

APPENDIX

PETITIONERS' EXHIBITS :I

- EXHBIIT P1 TRUE COPY OF THE RELEVANT PORTION OF THE PASSPORT OF THE
NITIN JOSEPH.**
- EXHBIIT P2 TRUE COPY OF THE REGISTRATION OF OVERSEAS CITIZEN OF INDIA
OF THE NITIN JOSEPH.**
- EXHIBIT P3 NOTICE OF MARRIAGE SUBMITTED BEFORE THE FIRST RESPONDENT
AS PER THE PROVISIONS OF SECTION 5 OF THE SPECIAL MARRIAGE
ACT -1954 ON 02-06-2015.**
- EXHIBIT P4 TRUE COPY OF THE REJECTION ORDER OF THE FIRST RESPONDENT
NUMBERED AS 137/2015 DATED 08-06-2015.**
- EXHIBIT P5 TRUE COPY OF THE CERTIFICATE ISSUED BY THE STATE REGISTRAR
OF THE PUBLIC HEALTH DEPARTMENT OF ILLINOIS STATE OF UNITED
STATES DATED 18/05/2015.**
- EXHIBIT P6 TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN
WP(C) NO. 3045 OF 2015.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

K. VINOD CHANDRAN, J.

W.P(C). No.16893 of 2015

Dated this the 5th day of June, 2015.

JUDGMENT

The petitioner, an Indian citizen, desires to enter into a marriage with one Nitin Joseph, who is a U.S. National of Indian origin. The petitioner, residing under the jurisdiction of the 1st respondent, made an application for contracting the said marriage under the Special Marriage Act, 1954. An objection was raised by the 1st respondent, allegedly on the ground that the marriage is intended to be entered into with a foreign citizen and, hence, the provisions of the Special Marriage Act 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 the High Court of Himachal Pradesh in ***Marian Eva v. State of Himachal Pradesh* [AIR 1993 Himachal Pradesh 7]**. The 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 Ext.P6 judgment.

3. A reading of the provisions of the Special Marriage Act would also indicate that, Section 4 contemplates a marriage between "any two persons" could be solemnized under the Act; if the conditions specified therein are fulfilled. To satisfy the officer of the conditions stated therein, the intending bridegroom has also given Ext.P5 Certificate dated 18.05.2015 issued by the State Registrar of the Public Health Department of Illinois State of United States, wherein it is stated that after an extensive and diligent search of all records available, and based on the information provided, no record of such person can be found, with respect to 'marriage'.

4. It is also relevant that, by Circular No.R.R.3-25537/00 dated 8.8.2014, the Government had answered a clarification made by the Inspector General of Registration and specifically indicated after citing the aforesaid decisions that the word

“person” used in Section 4 of the Special Marriage Act does not indicate either one of the parties or both the parties should be citizens of India.

5. In the present case, the petitioner, a citizen of India, is a resident within the jurisdiction of the 1st respondent. The American citizen, who she intends to marry, is not having permanent residence in India and even if a Marriage Officer is appointed by the Government of India in its Embassy at United States of America, there would be no requirement of informing such Marriage Officer, since the intending bridegroom is a U.S. citizen. In such circumstance, the application of the petitioner shall be accepted and notice shall be given by the 1st respondent as required under the Act and the petitioner permitted to contract the marriage as intended by her, which shall be solemnised under the Act.

The writ petition is allowed.

Sd/-
K. VINOD CHANDRAN,
JUDGE

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