

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

WP(C).No. 19526 of 2015 (M)

PETITIONER(S):

**ARUN VIJAYAN, AGED 28 YEARS,
S/O. K.K.VIJAYAN, RESIDING AT KUNJIRAKKATTU HOUSE,
NARIAMANGALAM P.O., ERNAKULAM DISTRICT - 686 693.**

**BY ADVS.SRI.K.ANIL JOSEPH
SRI.BENNY JOSE (VADASSERIL)**

RESPONDENT(S):

- 1. GOVT.OF KERALA,
REP. BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF TAXES (REGISTRATION),
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. INSPECTOR GENERAL OF REGISTRATION,
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION,
VANCHIYOOR P.O., THIRUVANANTHAPURAM - 695 001.**
- 3. THE MARRIAGE OFFICER AND SUB REGISTRAR,
KOTHAMANGALAM SUB REGISTRY, KOTHAMANGALAM,
ERNAKULAM DISTRICT - 686 691.**

BY GOVERNMENT PLEADER SRI.BIJU MEENATTOOR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 30-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- TRUE COPY OF THE RELEVANT PAGES OF THE PETITIONER INDIAN PASSPORT NO. L 1495416.
- P2 - TRUE COPY OF THE RELEVANT PAGES OF MISS. SANDRA MARIE FAGNONI, REPUBLIC OF FRANCE PASSPORT NO. 06A714577.
- P3 - TRUE COPY OF NOTICE OF INTENDED MARRIAGE DT. 26.5.15.
- P4 - TRUE COPY OF THE CERTIFICATE OF CAPACITY TO CONTRACT MARRIAGE ISSUED BY CONSULATE OF FRANCE IN PONDICHERI.
- P4(A) - TRUE COPY OF THE ENGLISH TRANSLATION OF THE CERTIFICATE OF CAPACITY TO CONTRACT MARRIAGE ISSUED BY CONSULATE OF FRANCE IN PONDICHERI.
- P5 - TRUE COPY OF THE ELECTRICITY BILL OF MISS. SANDRA MARIE FAGNONI.
- P5(A) - TRUE COPY OF THE ENGLISH TRANSLATION OF THE ELECTRICITY BILL OF MISS. SANDRA MARIE FAGNONI..
- P6 - TRUE COPY OF THE BIRTH CERTIFICATE OF SANDRA MARIE FAGNONI.
- P6(A) - TRUE COPY OF THE ENGLISH TRANSLATION OF THE BIRTH CERTIFICATE OF MISS. SANDRA MARIE FAGNONI.
- P7 - TRUE COPY OF THE CIRCULAR NO. RR3.25537/00 DT. 08.8.14 ISSUED BY THE 2ND RESPONDENT.
- P8 - TRUE COPY OF THE LETTER NO. C102/2014 DT. 26.5.15 ISSUED BY THE 3RD RESPONDENT ALONG WITH CIRCULAR DT. 21.8.14.
- P9 - TRUE COPY OF NO OBJECTION LETTER FROM THE PARENTS OF MISS. SANDRA MIE FAGNONI.
- P10 - TRUE COPY OF JUDGMENT DT. 18.9.14 IN WPC NO. 24086/2014.
- P11 - TRUE COPY OF JUDGMENT DT. 08.6.15 IN WPC NO. 16350/2015.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

K. VINOD CHANDRAN, J.

W.P.(C) No. 19526 of 2015 (M)

Dated this the 30th 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 Sandra Marie Fagnoni, who is a French Citizen. The petitioner made an application for contracting the said 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 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.P10 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 bride-to-be has also given Ext.P4 Certificate (and Ext.P4(a) translation) dated 14.05.2015 issued by the Consulate of France in Pondichery, 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. The entire issue was considered in Ext.P11 judgment also.

5. In the present case, the petitioner is a citizen of India. The French citizen, who he 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 France, there would be no requirement of informing such Marriage Officer, since the intending bride-to-be is a French citizen. In such circumstance, the application of the petitioner shall be accepted and the petitioner is permitted to contract the marriage as intended by him, which shall be solemnised under the Act.

The writ petition is allowed.

Sd/-
K.VINOD CHANDRAN,
JUDGE