

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**TUESDAY, THE 14TH DAY OF JULY 2015/23RD ASHADHA, 1937**

**WP(C).No. 21197 of 2015 (Y)**  
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**PETITIONER(S) :**  
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**MELVIN THOMAS, AGED 28 YEARS,  
S/O.THOMAS MANTHURNTHIL STEPHEN, MANTHURUTHIL HOUSE,  
ETTUMANOOR P.O., KOTTAYAM- 686 631.**

**BY ADV. SRI.M.J.THOMAS**

**RESPONDENT(S) :**  
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- 1. THE STATE OF KERALA,  
REPRESENTED BY SECRETARY TO GOVERNMENT,  
DEPARTMENT OF REGISTRATION, GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM- 695 001.**
- 2. THE INSPECTOR GENERAL OF REGISTRATION,  
VANCHIYUR, THIRUVANANTHAPURAM- 695 035.**
- 3. THE SUB REGISTRAR,  
REGISTRATION DEPARTMENT, OFFICE OF THE SUB REGISTRAR,  
ETTUMANOOR, KOTTAYAM.**

**BY GOVERNMENT PLEADER SMT.C.K.SHERIN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 14-07-2015, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

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- EXT.P1: TRUE COPY OF THE RELEVANT PAGES OF THE PETITIONER'S PASSPORT.
- EXT.P2: TRUE COPY OF THE SECONDARY SCHOOL LEAVING CERTIFICATE ISSUED TO TINCY JOHN, SHOWING HER DATED OF BIRTH AND THE MARKS OBTAINED FOR SSLC EXAMINATION.
- EXT.P3: TRUE COPY OF THE DRIVING LICENSE OF TINCY JOHN.
- EXT.P4: TRUE COPY OF THE PASSPORT OF UNITED STATE OF AMERICA ISSUED TO TINCY JOHN.
- EXT.P5: TRUE COPY OF THE AFFIDAVIT OF TINCY JOHN ATTESTED BY NOTARY PUBLIC.
- EXT.P6: TRUE COPY OF THE CERTIFICATE ISSUED BUREA OF VITAL STATISTICS, OF THE STATE OF FLORIDA USA.
- EXT.P7: TRUE COPY OF THE NOTICE U/S 5 OF THE SPECIAL MARRIAGE ACT, 1954.
- EXT.P8: TRUE COPY OF THE CIRCULAR DATED 08.08.2014 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS :

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NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J

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W.P(C) No. 21197 of 2015  
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Dated this the 14<sup>th</sup> day of July, 2015

J U D G M E N T

The petitioner, an Indian citizen, desires to enter into a marriage with one Tincy John. Though the said Tincy John is an Indian Citizen by birth, she obtained citizenship of the United States of America. The petitioner, residing under the jurisdiction of the 3<sup>rd</sup> respondent, made an application for contracting the said marriage under the Special Marriage Act, 1954. An objection was raised by the 3<sup>rd</sup> 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.

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 has also given Ext.P6 dated 08.07.2015 granted by the Bureau of Vital Statistics of the State of Florida, USA, which shows that there is no marriage recorded.

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 3<sup>rd</sup> respondent. The citizen of USA, 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 USA, there would be no requirement of informing such Marriage Officer, since the intending bride is a citizen of USA. In such circumstance, the application of the petitioner shall be accepted and notice shall be given by the 3<sup>rd</sup> 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)

jma

//true copy//

P.A to Judge