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

**PRESENT**

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

**&**

**THE HONOURABLE MR. JUSTICE T.R.RAVI**

**MONDAY, THE 21ST DAY OF DECEMBER 2020 / 30TH AGRAHAYANA, 1942**

**OP (FC).No.202 OF 2020**

**AGAINST THE ORDER IN OP 419/2017 DATED 21-12-2019 OF FAMILY COURT, MALAPPURAM**

**PETITIONER/S:**

**RAJENDRAN,**
**AGED 41 YEARS,**
**S/O. BALAKRISHNAN, RESIDING AT RAJA NIVAS,**
**KARUVAMBRAM POST, MANJERI, ERNAD TALUK.**

**BY ADVS.**
**SMT.O.A.NURIYA**
**SMT.ASHITHA RIA MERIN**

**RESPONDENT/S:**

**LATHIKA,**
**AGED 39 YEARS,**
**D/O. PARAMESWARAN, KAMALA VILASAM, PAZHYA UCHAKADA,**
**KAKKAVILA, KAROD VILLAGE, NEYYATTINKARA TALUK,**
**THIRUVANANTHAPURAM DISTRICT, PIN-695 506.**

**R1 BY ADV. SHRI.T.K.AJITH KUMAR**

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 21.12.2020, ALONG WITH OP (FC).458/2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

&

THE HONOURABLE MR. JUSTICE T.R.RAVI

MONDAY, THE 21ST DAY OF DECEMBER 2020 / 30TH AGRAHAYANA, 1942

OP (FC).No.458 OF 2020

AGAINST THE ORDER IN OP 419/2017 DATED 13-10-2020 OF FAMILY COURT, MALAPPURAM

PETITIONER/S:

RAJENDRAN,
AGED 41 YEARS,
S/O. BALAKRISHNAN, RESIDING AR RAJA NIVAS,
KARUVAMBRAM POST, MANJERI, ERNAD TALUK.

BY ADVS.
SMT.O.A.NURIYA
SMT.ASHITHA RIA MERIN

RESPONDENT/S:

LATHIKA,
AGED 39 YEARS,
D/O.PARAMESWARAN, KAMALA VILASAM, PAZHYA UCHAKADA,
KAKKAVILA, KAROD VILLAGE, NEYYATINKARA
TALUK,THIRUVANANTHAPURAM DISTRICT, PIN-695506.

R1 BY ADV. SHRI.T.K.AJITH KUMAR
R1 BY ADV. SMT.AISWARYA RAMESAN

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 21.12.2020, ALONG WITH OP (FC).202/2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

# JUDGMENT

Dated this the 21st day of December 2020

K.VINOD CHANDRAN, J.

The two Original Petitions are filed by the petitioner husband, who is also the petitioner before the Family Court. The petitioner husband filed an application for divorce before the Family Court. The same was decreed *ex parte* on grounds of cruelty and desertion. After considerable delay, an application was filed by the respondent wife to set aside the *ex parte* order, which was allowed by Ext.P8. (We notice that the date of Ext.P8 is not clear, since on its title it shows 21.12.2019 and at the place where the Family Court Judge has signed the order, it is shown as 21.01.2020. The lower Courts and its ministerial staff are to be cautioned on such avoidable mistakes). O.P.(F.C).No.202/2020 is with respect to the said order.

2. The learned Family Court Judge has found that, notice on the respondent wife was returned unserved with the endorsement that the door was locked. However, there was no substituted service effected. There was a paper publication produced, but, in a newspaper/edition

**having circulation in Kozhikode only. In fact, the respondent wife's address as shown in the divorce petition itself was of Thiruvananthapuram. It is due to the above circumstances noticed by the learned Family Judge that the *ex parte* order was set aside. On the question of delay, it was specifically found that the respondent wife came to know of the *ex parte* order only on her approaching the Feroke Police Station on 22.02.2019 to see the children. We do not find any reason to interfere with the order passed at Ext.P8.**

**3. O.P.(F.C)No.458/2020 challenges the order rejecting the Interlocutory Application filed by the petitioner husband to amend the divorce petition, adding the ground of adultery in addition to cruelty and desertion. The learned Family Court Judge rejected the same refusing to exercise discretion, especially since the petitioner was found to have received Ext.A1 document, on which, reliance was placed to urge the ground of adultery; long before the evidence commenced. Today when the matter came up, learned Counsel for the petitioner submitted that the divorce petition itself is likely to be closed today and both the Original Petitions would be rendered infructuous. We directed the Registrar (Subordinate**

Judiciary) to direct the Judge, Family Court, Malappuram, not to close the divorce petition today. We are informed by the Counsel appearing for the respondent wife that the matter has now been posted to 17.01.2021. We had also directed the copy of the B-diary, of the case to be produced, which has been furnished to us by 1.45 PM.

4. Learned Counsel for the petitioner vehemently argued that the application for amendment has to be allowed. It is submitted that the specific evidence regarding adultery engaged in by the wife of the petitioner was brought to his notice on 26.06.2020, when he received a reply under the Right to Information Act. It is also stated that the learned Family Court Judge has been consistently imposing cost on the petitioner for no reason; which prompted us in issuing peremptory orders directing the Family Court Judge not to proceed with the matter until further orders are issued by us.

5. On the aspect of the information received by the petitioner, we see from Ext.P4 application for amendment that the specific averment is that, the wife's wayward life was also a reason for seeking divorce. It is the contention that only when trial commenced it was brought to his notice that the said ground was not included in the

petition for divorce. On 26.06.2020, when the petitioner went to the Counsel's office for the purpose of appearing before Court to give evidence, he informed the Counsel about the evidence of the adulterous relationship she had with another, after desertion; whose wife had raised a complaint before the Police. It is hence an application was filed on the very next posting date on 06.07.2020. This is not to say that Ext.A1 document which proves the ground of adultery was received by the petitioner on 26.06.2020. The clear finding of the learned Family Court Judge is also that, it was received long prior to the evidence being adduced. Infact, in Ext.P4, the amendment sought for is as follows:

> "എതിർ കക്ഷി പരപുരുഷന്മാരോടൊപ്പം താമസിച്ചു അന്തിയുറങ്ങി ലൈംഗിക ജീവിതത്തിൽ ഏർപ്പെട്ട വിവരം ഹർജിക്കാരൻ മനസ്സിലാക്കിയ 24-1-2020 തിയ്യതി മുതല്ക്കും" എന്ന് കൂട്ടിച്ചേർത്തും ഹർജി നന്നാക്കി കല്പനയാവേണ്ടതും ആയതിനു അപേക്ഷയുള്ളതുമാകുന്നു.

6. Hence, obviously the petitioner came to know of the specific instance of adultery on 24.01.2020. The petitioner did not move an application before the evidence commenced, and waited till the evidence commenced to file an application for amending the grounds and incorporating that of adultery. Further the averments so made goes against the

pleading of the petitioner in Ext. P4, that, divorce was sought not only on cruelty and desertion but also on the ground of the wayward life led by the wife; which obviously is the ground of adultery. It is the specific contention of the petitioner in Ext.P4 that though the ground of adultery was available at the time of filing of the petition, he came to know that it was not incorporated in the petition only when evidence commenced. Hence the petitioner cannot rely on Ext. A1 to contend that he knew about commission of adultery only when he received that document. The application for divorce was filed in 2017 and it was once decreed ex-parte. The application is signed by the petitioner and he has affirmed that he has read over the application and verified it before putting his signature. There is no ground for seeking an amendment after three years and also after the trial commenced. We do not find any reason to interfere with the order passed by the learned Family Court Judge, rejecting the amendment application.

7. We are concerned about the allegation made as to cost being repeatedly imposed on the petitioner, for which we notice proceedings from 12.11.2020 onwards as follows, from the copy of the B-diary :

*12/11/2020 :Case adjourned to 20/11/2020.*
*20/11/2020 :Respondent present. Ready for evidence. Petitioner seeks adjournment. Petitioner shall pay cost of Rs.500/- to respondent. Listed for evidence of Respondent. 07/12/2020.*
*07/12/2020 : Respondent examined as RW1. Exts.B1 to B3 marked. For Hearing. 09/12/2020.*

*09/12/2020 : RW1 recalled on conditions. For cross examination of RW1. Listed to 21/12/2020.*
*21/12/2020 : RW1 present. Counsel for petitioner not ready. Adjournment sought for by petitioner. Adjourned on cost of Rs.3,000/-. Listed for cross examination of RW1. 11/01/2021.*

**8. We see that on 20.11.2020, though the respondent was present for evidence, the petitioner sought an adjournment, in which event, there was a cost imposed at Rs.500/- on the petitioner. On 07.12.2020, the respondent was examined as RW1 and Exts.B1 to B3 were marked. It was posted for hearing on 09.12.2020. Obviously, no cross examination was carried out on that date. On 09.12.2020, RW1 was recalled, presumably on the petition filed by the petitioner. For cross examination of RW1, the matter was posted on**

21.12.2020. Again on 21.12.2020, when RW1 was present the petitioner was not ready and his Counsel sought for an adjournment upon which cost of Rs.3,000/- was imposed. We specifically enquired from the Registrar (Subordinate Judiciary) as to why the cost was imposed on 21.12.2020, i.e., today. It was informed that the respondent had come all the way from Thiruvananthapuram for giving evidence. We find the cost imposed to be perfectly justified and in fact not sufficient to cover the expenses and the trouble taken to travel long distances in times of the pandemic.

9. Learned Counsel for the petitioner submits that, it is only by reason of the pending Original Petitions that adjournment was sought. We do not think such a practice should be encouraged. If there is no stay in an Original Petition, merely for reason of pendency, the proceedings before the Family Court cannot be stalled. In the present case, we see that O.P.(F.C)No.202/2020 was filed as early as on 16.06.2020 and O.P.(F.C)No.458/200 was filed on 11.11.2020. Though both were admitted, no stay was granted. We cannot find fault with the Family Court Judge for having proceeded with the matter. We also see no reason to interfere with the impugned orders.

Accordingly, we dismiss the Original Petitions. No

**order on costs.**

**Communicate the Judgment to the Family Court through Registrar(Subordinate Judiciary)**

**Sd/-**

**K.VINOD CHANDRAN**

**JUDGE**

**Sd/-**

**T.R.RAVI**

**JUDGE**

**uu/22.12.2020**

# APPENDIX OF OP (FC) 202/2020

**PETITIONER'S/S EXHIBITS:**

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|---|---|
| EXHIBIT P1 | TRUE COPY OF THE ORIGINAL DIVORCE PETITION O.P(HMA)419/2017 DATED 6.7.2017 FILED BEFORE FAMILY COURT, MALAPPURAM. |
| EXHIBIT P2 | TRUE COPY OF THE EX-PARTE ORDER DATED 19.2.2018 IN O.P.(HMA) 419/2017 OF THE FAMILY COURT, MALAPPURAM. |
| EXHIBIT P3 | TRUE COPY OF M.C.140/2019 FILED BY RESPONDENT BEFORE THE FAMILY COURT, MALAPPURAM. |
| EXHIBIT P4 | TRUE COPY OF I.A.NO.159/2019 DATED 25.2.2019 FILED BEFORE THE FAMILY COURT, MALAPPURAM. |
| EXHIBIT P5 | TRUE COPY OF I.A.NO.160/2019 DATED 25.2.2019 FILED BEFORE THE FAMILY COURT, MALAPPURAM. |
| EXHIBIT P6 | TRUE COPY OF OBJECTION FILED BY PETITIONER TO I.A.159 OF 2019 DATED 11.12.2019. |
| EXHIBIT P7 | TRUE COPY OF OBJECTION FILED BY PETITIONER TO I.A. 160 OF 2019 DATED 11.12.2019. |
| EXHIBIT P8 | TRUE COPY OF COMMON ORDER OF FAMILY COURT, MALAPPURAM IN I.A.159 OF 2019 AND 160 OF 2019. |

# APPENDIX OF OP (FC) 458/2020

**PETITIONER'S/S EXHIBITS:**

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|---|---|
| **EXHIBIT P1** | **TRUE COPY OF THE ORIGINAL DIVORCE PETITION O.P.(HMA) 419/2017 DATED 6.7.2017.** |
| **EXHIBIT P2** | **TRUE COPY OF THE EX-PARTE ORDER DATED 19.2.2018.** |
| **EXHIBIT P3** | **TRUE COPY OF COMMON ORDER OF FAMILY COURT, MALAPPURAM IN I.A.159 OF 2019 AND 160 OF 2019.** |
| **EXHIBIT P4** | **TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE PETITIONER BEFORE HON'BLE FAMILY COURT.** |
| **EXHIBIT P5** | **TRUE COPY OF THE ORDER OF HON'BLE FAMILY COURT IN IA.NO.6/2020 IN OP NO.419/2017 DATED 13.10.2020.** |