



W.P.(MD).No7288 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 12.10.2022

ORDER PRONOUNCED ON : 17.10.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.7288 of 2015
and MP(MD).Nos.1 and 2 of 2015**

B.Sahar Banu

.....Petitioner

Vs

1.The Inspector General of Registration /
The Registrar General of Marriage Registration
100, Santhom High Road, Chennai

2.The District Registrar
Office of the District Registrar
Palayamkottai
Tirunelveli District

3.The Sub Registrar
Office of the Sub Registrar
Joint-I, Palayamkottai
Tirunelveli District

4.A.Abdul Hameed

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified, directing the respondent Nos. 2 and 3 to calling for the records in Marriage Registration Certificate in Marriage Sl.No. 247/2014 dated 14.08.2014 and quash the same as illegal on the file of the Respondent No.3.



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For Petitioner : Mr.S.M.A.Jinnah
For R1 to R3 : Mr.K.S.Selvaganesan
Additional Government Pleader
For R4 : No Appearance

ORDER

The present writ petition has been filed to quash the marriage certificate that was issued by the second respondent herein in Serial No.247 of 2014 dated 14.08.2014 and to quash the same as illegal on the file of the third respondent.

2.The petitioner has contended that while she was doing her Bachelor degree in an Annai Hajira Girls College at Melapalayam, the fourth respondent herein who is her cousin used to tease her. On 14.08.2014 when the petitioner was in College, the fourth respondent informed her that her mother had fallen ill and she has been admitted in the Hospital. Believing the same, the petitioner had accompanied the fourth respondent in a Car, only to be taken to the third respondent office. In the third respondent Office, forcibly photographs were taken and she was forced to sign the marriage register on the threat that her parents would be killed. In a helpless situation, she has signed the papers before the third respondent office.



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3.The petitioner had further contended that the fourth respondent proclaimed that he had married the petitioner on 01.06.2014 by showing the impugned marriage certificate. In view of the continuous threat, she had stopped going to the College and informed her parents. Based on the information given by her, a complaint has been lodged before the Inspector of Police, Cheranmahadevi Police Station on 12.11.2014. The petitioner has also sent a representation to the Superintendent of Police, Tirunelveli to give adequate protection and take action as against the fourth respondent herein. She had filed W.P(MD).No.18558 of 2014 seeking police protection and by way of an interim order, adequate police protection was granted by this Court. The petitioner has further contended that in fact no marriage as per Islamic tradition has taken place in Vengadeshwara Mahal at Palayamkottai on 01.06.2014. Without undergoing any marriage ceremony, the petitioner was forcibly taken to the third respondent Office and threatened to sign the marriage register. Though she has sent a representation to the respondents 1 to 3, they have not initiated any action for cancelling the said fake marriage certificate. Hence, the present writ petition.

4.Though the fourth respondent was served, he has not entered appearance either in person or through a counsel.



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5.A perusal of the contents of the affidavit and the complaint lodged by the writ petitioner clearly indicate that a serious allegation has been made that without undergoing any marriage ceremony as per Islamic tradition, a marriage has been registered before the third respondent Office and a certificate has been issued by the second respondent herein. The said marriage certificate has been issued under Tamil Nadu Registration of Marriages Act, 2009 (hereinafter called as 'the Act').

6.Let us consider the provisions of the said Act and Rules framed thereunder.

“3.Marriages to be compulsorily registered:

Every marriage performed on and from the date of commencement of the said Act, shall be registered under this Act notwithstanding the fact that the said marriage had been entered in the marriage registers governed by any other personal laws of the parties to the marriage or custom or usage or tradition”.

7. Power to refuse Registration of Marriage:

(1) Where the Registrar, before whom the memorandum is delivered or sent under section 5 on scrutiny of the documents filed with the memorandum or, on the other facts noticed or brought to his notice, is satisfied or has reason to believe that,—

(a) the marriage between the parties is not performed in



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accordance with the personal laws of the parties, or any custom or usage or tradition; or

(b) the identity of the parties or the witnesses or the persons testifying the identity of the parties and the performance of the marriage is not established beyond reasonable doubt; or

(c) the documents tendered before him do not prove the marital status of the parties,

he may, after hearing the parties and recording the reasons in writing, refuse to register the marriage and may,—

(i) call upon the parties to produce such further information or documents as deemed necessary, for establishing the identity of the parties and the witnesses or correctness of the information or documents presented to him, or

(ii) if deemed necessary, also refer the papers to the local police station within whose jurisdiction the parties reside, for verification.

(2) Where, on further verification as provided in sub-section (1), the Registrar is satisfied that there is no objection to register the marriage, he may register the same. If in the opinion of the Registrar, the marriage is not fit for registration, he may pass an order of refusal in writing, recording the reasons therefor”

7. As per Section 7 of the Act, the Registrar has got power to refuse the registration of marriage, if he is satisfied as reason to believe that the marriage between the parties is not performed in accordance with personal law of the parties or custom or usage or tradition.



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8.Rule 4(a) of the Tamil Nadu Registration of Marriages Rules, 2009

clearly points out that the Registrar is duty bound to verify the memorandum for registration of marriage. Rule 5 (1)(a) is extracted as follows:

5.Procedure for Registration of Marriage: (1)(a) Every memorandum for Registration of marriage shall be in Form-I or Form-IA (in case of persons whose marriage was solemnized under Muslims Personal Law) and it shall be delivered in person () to the Registrar along with an application in Form-II within ninety days from the date of marriage. Form-I and Form-IA shall be supplied free of cost to the parties to a marriage by the Registrar”***

9.A perusal of Form-IA discloses that the name and address of the Jamath which conducted the marriage should be disclosed in the Form. As per Form-II, the couple has to submit a declaration to the registrar of marriage. In the said Form-II, the couple has to declare that a valid marriage was solemnised between them and the marriage is capable of being registered under Section 3 of the Act. The couple has to further declare that the conditions laid down in the respective personal law has been satisfied.

10.A perusal of the above said provisions and Rules will clearly point out that it is mandatory for the parties to undergo those ceremonies of the marriage which are applicable to their respective religion. Only after a



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marriage is conducted as per the respective personal laws, the said marriage could be registered under the Act. Without undergoing the marriage ceremony, the marriage cannot be registered under the Act. Mere registration of the marriage without undergoing any marriage ceremony as per their respective personal law, would not confer any marital status upon the couple.

11.The Registering Authority cannot simply rely upon the statutory forms and mechanically proceeded to register the marriage. The Registering Authority should satisfy himself that the parties have undergone the marriage ceremony as per their respective personal laws before registering the marriage. It is a statutory duty cast upon the Registering Authority.

12.The Hon'ble Division Bench of our High Court in a Judgement reported in **1995-2-L.W. Page 95 (Shaji Vs. Gopinath) while considering the Madras Hindu Marriage (Registration) Rules, 1967** has held in Paragraph Nos.8 and 11 as follows:

“8. [Section 8](#) of the Hindu Marriage Act provides for registration of Hindu Marriages for the purpose of facilitating the proof of such marriages. Under that section, the State Government is empowered to make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose. Thus the section contemplates registration only of marriages which had already taken place. The ceremonies for the marriage are prescribed by [Section 7](#) of the Act.



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Now *Section 7* of the Act is introduced by Madras Amendment Act 21/1967. A marriage has to be solemnised in the presence of relatives, friends or other persons in the manner prescribed in that Section. In a case where the provisions of *Section 7* or *Section 7-A* are not complied with, there is no question of there being a Hindu Marriage between a man and woman, as contemplated by the Act. Without such a marriage (sic)ther as prescribed under *Section 7* or as prescribed under *Section 7-A*, there cannot be registration of marriage between man and woman under the provisions of *Section 8* of the Act.

11. It is clear from the above provisions that there has to be solemnization of the marriage in accordance with the provisions of the Hindu Marriage Ad before the same is registered under *Section 8* of the said Act. In the present case, the uncontradicted version of the plaintiff in the plaint and the deposition is to the effect that there was no marriage of any form at any time before the registration. According to the evidence, there was only registration of marriage and either before or after the parties did not live as husband and wife”.

13.The Hon'ble Division Bench of our High Court reported in **(2009) 2 MLJ (Crl) 607 (B.Jegadeesh Chandra Bose and another Vs. Superintendent of Police, Kanyakumari District, Nagercoil and others)** while considering the Tamil Nadu Hindu Marriage (Registration) Rules, 1969 in Paragraph No.32 has held as follows:

“32.On the above backdrop of the specific provisions, any marriage, which is not solemnized as per the respective provisions of



Laws, cannot be recognized as a valid marriage and consequently the same cannot be registered. Further, such marriage registration must be by following the procedures provided under the respective enactments. Under these circumstances, a mere presentation of documents for registration of marriage cannot by itself confer any legal status to the parties and such registration of marriage would be contrary to the procedures provided under the respective enactments”.

14.The Hon'ble Single Judge of our High Court in a judgment reported in **2021-3-L.W.820 (T.Beril Lynora Vs. The District Registrar (Administration), Thoothukudi and others)** in Paragraph No.12 has held as follows:

“12.In view of the above, the very registration of the marriage by the second respondent is invalid in the eye of law. The second respondent failed in his duty by not scrutinizing the documents and ascertaining the age of the petitioner and the registration has taken place in a mechanical fashion. Unfortunately, the registration of the marriage by the second respondent is now standing in the way of the petitioner and it will very seriously affect her future prospects. The learned counsel for the third respondent has categorically submitted that the third respondent leaves it to the decision of the Court and the third respondent will abide by any decision”.

15.A combined reading of the judgment of the Hon'ble Division Bench and the learned Single Judge of this Court makes it clear that without undergoing marriage ceremony as per the respective personal laws, custom or



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usage or tradition of the parties, the parties cannot present an application for registration of the marriage. In case, if any such application is being presented, the Registrar is duty bound to verify the fact whether any marriage has taken place already. Without verifying the factum of marriage, the Registering Authority cannot mechanically register the marriage based upon the application present by the parties. In case, if any marriage certificate is issued without being preceded by any marriage ceremony, it can only be considered to be a fake marriage certificate.

16.The Tamil Nadu Registration of Marriages Act, 2009 and Rules framed thereunder do not empower the Registering Authority to register a marriage unless they are satisfied that a marriage has already taken place between the parties as per their respective personal laws. The Act provides for registration of marriages that have already taken place. Hence, the registration is a formal record of an event which has already taken place. If any registration certificate is issued by any Registering Authority, without their being preceded by a marriage ceremony of the parties, the same will not confer any marital status upon the parties.

17.A careful reading of Section 3 of the Act, clearly reveals that the marriage that have been performed on and from the date of commencement of



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the Act shall be registered. Hence, it is clear that only marriages that have already been performed can be registered under the Act. The registration of marriage is a consequential event and not a formal marriage.

18. Section 23 of the Act clearly specifies that non-registration of the marriage does not invalidate the marriage. Hence, it is clear that the registration will not confer marital status, but only the formal marriage ceremony as per the personal law would confer marital status upon the parties.

19. In the present case, admittedly, the petitioner and the fourth respondent herein belong to Mahomedan Religion. The marriages are conducted in the Jamath and the certificate is being registered in the Jamath. Only thereafter, the couple will approach the Registrar of Marriage to register the said marriage. As per statutory Form-IA, it has to be specifically mentioned about the name and address of the Jamath which had conducted the marriage.

20. In the present case, nothing has been stated in the application form. The statutory form simply discloses that a marriage has taken place at Vengadeshwara Mahal, Thiruvananthapuram Road, Palayamkottai



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Murugankurichi, Tirunelveli District. Hence, it is clear that the Registering Authority has proceeded to register the marriage clearly in violation of the statutory provision and the rules thereunder.

21.In view of the above said fact, the marriage certificate in Marriage Serial No.247 / 2014 dated 14.08.2014 issued by the second respondent herein is set aside. The respondents are directed to delete the said entry and record the same in the Marriage Register Book and other relevant records. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

17.10.2022

Internet : Yes/No
Index : Yes/No
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To

1.The Inspector General of Registration /
The Registrar General of Marriage Registration
100, Santhom High Road, Chennai

2.The District Registrar
Office of the District Registrar
Palayamkottai
Tirunelveli District

3.The Sub Registrar
Office of the Sub Registrar
Joint-I, Palayamkottai
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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