

(1984) 06 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 4703 of 1984-G

P.M. Noorjahan Galbath

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 19-06-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 38
Foreign Marriage Act, 1969 — Section 17, 4, 9
Foreigners Act, 1946 — Section 3
Passports Act, 1967 — Section 10, 6

Citation : AIR 1985 Ker 104

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : K. Bhaskaran Nair and V. Divakaran Poti, for the Appellant;

Final Decision : Dismissed

Judgement

K. Sukumaran, J.—This is a case where a wife espouses the cause of her husband in relation to an application for visa. She is an Indian citizen; her husband is not. He is an Iranian national residing in Dubai. The marriage is claimed to have taken place 13 years back.

The wife could not proceed to Dubai as "her husband will be on tour in connection with his business for months together and in that event she and her children will be left alone in a foreign country without any assistance from anyone." Attempts made by her husband to obtain visa had been unsuccessful. She felt that refusal of visa was possibly the result of a confusion regarding the identity of the applicant. Her husband is Yusuf Mohamed Galbeth as opposed to "Yusuf Mahamood Galbath." Her understanding is that "there is some case pending against the latter." Under Ext. P2 the Government of India declined "to grant visa to Mr. Yusuf Mohamed Galbath for coming to India."

2. Ext. P2 is attacked on diverse grounds—Having been permitted to marry a foreigner, a duty is cast on the Government to issue visa to her husband "to

come to India and stay with the petitioner at least for a limited period in a year", contends the petitioner. The denial of visa is complained of as violative of Sections 4, 9 and 17 of the Foreign Marriage Act, 1969 and Section 3 of the Foreigners Act. An infraction of the provisions contained in Articles 14 and 38 of the Constitution is also alleged. According to her, her remedy to invoke Section 18 of the Foreign Marriage Act, 1969 is also defeated "because her husband is willing to come and stay with her in India." Violation of Sections 6 and 10 of the Indian Passport Act, is also urged as vitiating Ext. P2. Relying on the well -- known decision in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, it is complained that the order results in the deprivation of the liberty of the petitioner and thus violates Article 21 of the Constitution of India.

3. Grant of visa is a serious matter. This is particularly so in a situation when the Nation has to be on its alert. Judicial decisions in Immigration cases illustrate the sensitive nature of the issues and the complexities of the problems. The Government, ordinarily, would be the best Judge for the determination of matters connected with the grant of visa. The Government conferred with the necessary power is expected to exercise it on the basis of the information available with it and on a consideration of relevant circumstances. Concededly, there are circumstances indicating that a person by name Yusuf Mohammed Galbath is an undesirable person and is undeserving of a visa. That there has been a mistaken identity in respect of the applicant, has not been established in the present case. The person who requires the visa has not made the application. It is for him to furnish materials before the Government and to establish that he deserves the grant of visa. Contentions regarding the identity of the person should not be adjudicated by this court in a writ proceeding, at the instance of a person other than the applicant for the visa. It is inconceivable that a person who is mostly away in connection with his business could not make a direct application to the Government of India with satisfactory testimonials regarding his identity and his creditable character justifying the grant of visa. In the above circumstances, this court will not be justified in interfering with the exercise of the powers by the Government of India, in relation to the grant of visa.

4. There is no factual basis to sustain any of the complaints regarding the violation of the Foreigners Act or of the Foreign Marriage Act, 1969. A grant of permission to a foreign national to marry an Indian citizen does not impose a permanent duty on the Government to grant a visa to the foreign spouse. Larger considerations, including the security of the State, and international relations, have all to be reckoned while deciding upon the issue of a visa to a foreign national. As observed by the Privy Council, "those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a Court of law or otherwise discussed in public." *The Zamora* (1916) 2 AC 77).

5. I am unable to detect any basis for a violation of the provisions of the

Foreigners Act, of the Passport Act, or of Articles 14 and 38 of the Constitution. As regards the complaint about violation of the constitutional provisions, no material allegations whatever have been made.

6. The petitioner cannot invoke the provisions of the Foreign Marriage Act, 1969 to seek the reliefs in the writ petition. The Foreign Marriage Act, as its long title clarifies, is an Act to make provision relating to marriages of citizens of India outside India. That such solemnisation of marriages is effected outside India is clear from the scheme of the Act also. Section 2(b) defines "Marriage Officer" as a person appointed u/s 3 to function as such. Section 3 empowers the Central Government to appoint such of its Diplomatic or Consular officers to be Marriage Officers for any foreign country. The formalities referred to in Chap. II pertain to matters which are to take place before such Marriage Officer. u/s 15, a marriage solemnised in the manner provided under the Act "shall be good and valid before law." That section has the caption "Validity of Foreign Marriages in India." The averments in the original petition do not make out that the marriage which the petitioner had is a "foreign marriage" coming under the Act.

7. Equally unsustainable is the contention based on Section 18. That section only makes applicable provisions of chaps IV to VII of the Special Marriage Act, 1954 to the marriages solemnised under the Act. If the requirements of the Section, and of the enabling provisions in the Special Marriage Act, 1954 (lack?) in the case of the petitioner and consequently the petitioner is not in a position to press into service the provisions thereof for redressal of any of her grievances, no blame can be fastened on that count, on the Government of India.

8. The pangs of separation of a young Indian wife and a mother of three children, can be understood and be even sympathised with. Larger interests of the Nation should, however, govern the decision whether a visa to a foreign national should be granted or declined. When there are no materials to establish an arbitrary or capricious action in that behalf, and when the person directly concerned has not chosen to approach this court, this court should decline jurisdiction under Article 226 of the Constitution. The writ petition is dismissed.