
(2009) 03 KL CK 0103
In the High Court Of Kerala
Case No : Writ Petition (C) No. 9684 of 2009

Sali	Vs	APPELLANT
Santhosh		RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Family Courts Act, 1984 — Section 7

Citation : (2010) 1 DMC 817 : (2010) 1 KLT 676 : (2011) 6 RCR(Criminal) 738

Hon'ble Judges : P. Bhavadasan, J;A.K. Basheer, J

Bench : Division Bench

Advocate : Sumathi Dandapani and Millu Dandapani, for the Appellant;
Santhosh P. Poduval, for the Respondent

Judgement

A.K. Basheer, J.—In this Writ Petition filed under Article 227 of the Constitution of India, we have adopted an unusual procedure akin to that of a Trial Court to decide the issue as to whether or not the proposed marriage of petitioner No. 1, Ms. Sali, aged 20 years with Mr. Shiline is to be permitted to be solemnized on March 29,2009, in view of the peculiar facts and circumstances of the case.

2. The facts revealed from the materials available on record may be briefly noticed:

3. The respondent herein, claiming that he had married petitioner No. 1 on December 12, 2008 by undergoing customary rites prevalent in the Ezhava community, filed a petition for injunction before the Family Court, Trichur in O.P. No. 377/2009 u/s 7 of the Family Court Act praying for a decree of permanent prohibitory injunction restraining Ms. Sali (petitioner No. 1), her parents, brother and also her uncle from conducting the marriage of Ms. Sali with any other person. Along with the Original Petition, the respondent had filed an interlocutory application for temporary injunction. The said application was allowed by the Family Court and an ex parte order of interim injunction was passed on March 23, 2009 by which the petitioners herein were restrained from conducting the

marriage of Ms. Sali. A true photocopy of the interim order of injunction passed by the Family Court is on record as Ext. P7.

4. The above order has been challenged in this Writ Petition.

5. When this Writ Petition came up for admission on March 25, 2009, this Court had passed an interim order directing the Family Court to consider the interlocutory application and pass orders thereon after hearing the parties as expeditiously as possible, at any rate, by 1 p.m. today, viz., March 27, 2009. This Court further directed that the Family Court shall hold a special sitting and cancel the camp sitting, if any, to comply with this direction.

6. Smt. Sumathi Dandapani, learned senior counsel appearing for the petitioners, made a special mention in the forenoon about this case, and requested us that the Writ Petition be taken up today itself as the marriage of Ms. Sali is scheduled to be held on March 29, 2009. She further informed us that the learned Judge of the Family Court had passed orders making the order of interim injunction absolute. She submitted that all arrangements have already been made for the marriage. She drew our attention to Ext. P6 invitation card for the wedding. Learned senior counsel requested that the Writ Petition be taken up today itself as otherwise irreparable injury and damage would be caused to the petitioners and their family.

7. When this case was taken up at about 4.10 p.m., we heard learned senior counsel for the petitioners and also Sri. Santhosh Poduval, learned Counsel for the respondent. A copy of the order passed by the Family Court today, is made available for our perusal.

8. In the course of hearing, we were informed that petitioner No. 1 (Ms. Sali) is present in Court. When we spoke to her, she told us that she had never undergone any proper marriage ceremony as alleged by the respondent. When we perused Ext.P1 complaint filed by Ms. Sali before the Superintendent of Police, Thrissur in this regard, we deemed it fit to take her sworn statement. Therefore, she was administered oath and her statement was recorded in open Court.

9. In the statement Ms. Sali stated that in the morning on December 12, 2008 she was picked up by the respondent in one Omni car from the college. The respondent and his friends, who were with him, initially took her to Ayyappa temple at Vadakkancherry on the way to Cheruthuruthy. When the temple authorities refused permission to conduct any marriage ceremony in the temple, the respondent took Ms. Sali to another nearby Devi temple. There also the temple authorities refused permission. Thereafter, the respondent took Ms. Sali to his sister's house. The respondent put a Thulasi garland around her neck. She was asked to follow suit. After that, the respondent took her in the car and dropped her near her residence. Ms. Sali categorically stated in her sworn statement that she had undergone this ceremony under threat and coercion from the respondent. She was warned by the respondent that he would defame her

whole family, if she did not agree for this ceremony.

10. After recording the statement of Ms. Sali, we have heard the learned senior counsel and the learned Counsel for the respondent.

11. It is vehemently contended by learned Counsel for the respondent that the procedure adopted by this Court in this Writ Petition is quite unusual and irregular. He contends that in a petition under Article 227 of the Constitution of India, such a procedure is never contemplated and this Court ought not to have resorted to this strange procedure at all.

12. We took the sworn statement of Ms. Sali since she asserted in the course of our interaction with her that she had never undergone a marriage ceremony as alleged by respondent No. 1. She further told us that she had gone with respondent No. 1 as she was in a totally perplexed and confused state of mind. She asserted that she never intended to be the wife of respondent No. 1. She is in fact looking forward to the proposed marriage arranged by her parents day after tomorrow. In that view of the matter we have no hesitation to hold that the inherent power vested with this Court under Article 226 of the Constitution of India is wide enough to enable this Court to adopt any procedure which is in tune with the processual methodology known to law.

13. This Court had adopted this procedure in exercise of its original as well as inherent jurisdiction. It is trite that there cannot be any fetters on this Court while exercising its powers under Article 226 of the Constitution on the specious plea that this procedure is not being followed ordinarily. Procedure is only a handmaid to justice. The Court has to always strive for pursuit of truth and equity in order to do justice to parties to the lis. Such pursuit may lead the Court to a path which is not most often trodden but that does not mean that all untrodden paths are forbidden. Sometimes the journey may be through an alien terrain. But as long as the choice of the path is made with a clear vision of the destination ahead, the caravan of justice should move on; unmindful of the sceptic onlookers and wayfarers; because ultimately what matters is only rendering justice to a beleaguered litigant. Technical or procedural trivialities should never be allowed to frustrate a litigant who comes before the Court craving for justice. In our view, the situation might have been totally different if only the Family Court had bothered to show some pragmatism rather than going at a tangent dealing with unnecessary pedantics.

14. In this context, we may also refer to the other contention raised by the learned Counsel for the respondent. He stated before us that the respondent and Ms. Sali had undergone the marriage ceremony as provided under the customary law. He and Ms. Sali had exchanged garlands. The respondent had put a ring on her finger. He had also given Pudava (clothes) to her. Both of them had performed Sapthapathi around holy fire. Thus, according to the learned Counsel, a valid marriage subsisted between the respondent and Ms. Sali. Therefore, Ms. Sali cannot be permitted to marry another person. But Ms. Sali would assert

before us that what she was made to perform was only to put a Thulasi garland around the neck of the respondent, who had also done only that much. Nothing more, nothing less.

15. Learned Counsel for the respondent has shown us some of the photographs allegedly taken at the time of the so called marriage. According to the learned Counsel, the photographs have been produced before the Family Court. Significantly the photographs belie the story of the respondent. There is no Sapthapathi, no presentation of clothes nor any exchange of ring in any of the photographs.

16. We have carefully considered the materials available on record. In our view, the order passed by the Family Court in I.A. No. 1296 of 2009 in O.P. No. 377 of 2009 is prima facie unsustainable. The reasoning of the learned Judge of the Family Court is totally faulty; to say the least. Hindu marriage is a sacred ceremony, which cannot be rendered farcical through unethical adventurism. A young gullible girl and her parents should not be put to this kind of embarrassment. Balance of convenience is highly in favour of the petitioner. This vital aspect was totally overlooked by the Family Court. At any rate, we are satisfied that the petitioners need not be restrained from conducting the marriage of petitioner No. 1 with Shiline which is scheduled to be held on March 29, 2009, if they choose to do so. Therefore, the final order passed by the Family Court in I. A. No. 1296 of 2009 in O.P. No. 377 of 2009 dated March 27, 2009 shall remain stayed until further orders.

Learned Senior Counsel submits that the respondent or his men and supporters may create some problem during the marriage ceremony on 29th March, 2009. If any complaint in this regard is received from the petitioners, the Superintendent of Police, Trichur shall ensure that adequate protection, is afforded to the petitioners to conduct the marriage ceremony peacefully and without any hindrance.