

(2008) 12 KL CK 0016

In the High Court Of Kerala

Case No : Writ Petition (C) No"s. 33729 and 34730 of 2008

Shemi P. Ali

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-12-2008

Acts Referred:

Citation : (2009) 3 KLT 167

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : E.S.M. Kabeer, for the Appellant; M.R. Sreelatha, Government Pleader and P. Parameswaran Nair, Asst. Solicitor General, for the Respondent

Judgement

V. Giri, J.—The contentions raised in these two Writ Petitions are common. The issue involved is also the same. Therefore, they have been heard together and are being disposed of by this common judgment. I will refer to the facts in W.P. (C) No. 33729/08 in the first instance.

W. P.(C) No. 33729/08

2. The petitioner applied for a passport on 29.04.2008 for Hajj pilgrimage. The earlier passport, which she held, had time expired. The petitioner was earlier married to one Beeran, but there was a divorce, on her husband pronouncing Talaq", in the year 1994. She then married Abdul Kareem, her present husband. She surrendered the old passport for a new passport. Obviously, the petitioner sought for a change of the name of her husband from Beeran to Abdul Kareem. The petitioner was asked to swear to an affidavit affirming that Fathima Beevi, as shown in the passport which had time expired, and Fathima Abdul Kareem, which is the name given by her in the application for the issuance of new passport, are one and the same. Ext.P2 affidavit was filed and it was attested by a notary public. The petitioner was then asked to produce an affidavit Annexure A. The said affidavit was filed as Ext.P4 and produced along with it, was a certificate from the Kanjirakkad Muslim Jam-ath affirming the dissolution of the earlier

matrimonial relationship and the petitioner getting married to Abdul Kareem. In spite of this, a new passport was not issued and hence this Writ Petition.

3. When the petitioner had approached this Court earlier in W. P.(C) No. 30580/08, on instructions, learned Central Government Standing Counsel had submitted that the passport officers are now insisting on an authentication of the divorce from a competent court as per Ext.P10 issued from the Law Department of the State Government. In these circumstances, the earlier Writ Petition was withdrawn without prejudice to the petitioner's contentions and with liberty to challenge Ext.P10. It is, therefore, the present Writ Petition has been filed.

4. A detailed counter affidavit has been filed on behalf of the 1st respondent. It has been affirmed in the counter affidavit that the rules and regulations regarding the issue of passport raised are those which are contained in the Passport Information Booklet Ext.R1(a). The State Government does not purport to interfere with the power of the competent authority under the Passport Act. Reference is made to Clause 7 Ext.R1(a), which reads as follows:

7. Change of Name:

1. Following marriage: Remarriage divorce:

(a) A woman applying for first time for a passport in her married name for change of name/surname in existing passport on account of marriage OR for substitution of father's name with husband's name, must furnish an attested copy of marriage certificate issued by Registrar of Marriages OR an affidavit from the husband and wife.

(b) Divorcees applying for change of name OR for substitution of husband's name with father's name in existing passport must furnish:

(i) Divorce deed duly authenticated by court: OR

(ii) Deed poll/sworn affidavits (Annexure "A")

(c) Remarried ladies applying for change of name/husband's name must furnish:

(i) Divorce deed/death certificate as the case may be in respect of her first husband, and

(ii) Documents as at (a) above relating to second marriage.

5. Authentication of divorce by competent court is one of the methods of proving a divorce or even the existence of a remarriage. But it is not the only method. Divorce resultant upon a "talaq" pronounced by her husband is a mode of divorce that is accepted in the Muslim community. An affirmation of the state of affairs by a sworn affidavit in the form "Annexure A" would suffice going by Clause 7 of Ext.R1(a). It is affirmed that State Government does not propose to make any addition to what is already mentioned as due procedure under Ext.R1(a).

6. Having heard Learned Counsel for the petitioners and learned Government Pleader and the learned Assistant Solicitor General, I am of the view that, in these circumstances, the concerned passport officer may proceed to issue a passport, as sought for by the petitioners with the corrections as sought for by them, provided they comply with the procedural formalities stipulated in Ext.R1(a). This shall be done within a period of one month from the date of receipt of a copy of this judgment.

Writ Petitions are disposed of as above.