

(2009) 03 KL CK 0007

In the High Court Of Kerala

Case No : Writ Petition (Criminal) No. 431 of 2008

Syed Abdul Basith, S.M.

APPELLANT

Vs

Assistant Commissioner of Police and Others

RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Kerala Registration of Marriages (Common) Rules, 2008 — Rule 191, 6, 67

Citation : (2009) 03 KL CK 0007

Hon'ble Judges : Kurian Joseph, Acting C.J.; K.T. Sankaran, J

Bench : Division Bench

Advocate : K. Jayakumar, P.B. Krishnan, R. Suraj Kumar, Geetha P. Menon and N. Ajith, for the Appellant; Babu Karukapadath, M.A. Vaheeda Babu and P.G. Pramod and M.R. Anupama, Commissioner, for the Respondent

Judgement

Kurian Joseph, Actg. C.J.

1. This is a case where the father of a girl approached this Court in a habeas corpus petition alleging that on completion of 18 years and 2 days she had been found missing. It was stated that he originally belonged to State of Karnataka and their mother tongue was Navayethi. The parties, on notice, had appeared before us and it was brought to our notice that the 3rd Respondent, admittedly a major, and the daughter of the Petitioner had contracted a "registered marriage". The document executed on a stamp paper worth Rs. 50 and registered before the Sub Registrar's Office, Panavally was also produced before us. Written in Malayalam the document was styled as an agreement of marriage and not even as agreement for marriage. The recitals would show that as per the said agreement, the parties had become husband and wife. To attempt a true translation"... As per this deed we have become couples". It was also stated in the said agreement that as per the said agreement the parties have decided to live together as husband and wife unto death. The disturbing question before us was whether that document would constitute a valid marriage. The parties admittedly had not, as on that date, undergone any sort of legal marriage either

as per their religion or under the Special Marriage Act, 1954. The boy and the girl are educated and yet apparently they have been misguided by somebody to believe that by executing an agreement of marriage as referred to above, they would become husband and wife. We have seen several such instances. We have also seen the plight of poor girls later thrown away like squeezed lemon. Too late they realise painfully that they cannot claim any matrimonial relief against their so called husbands. More heart-rending were the scenes of the helpless children born in such relationships. Time and again we had thought of issuing certain directions to the Government to frame some guidelines in such matters. As far as the registration of an agreement is concerned, the registering authority, namely, the Sub Registrar, cannot go into the legality or otherwise of an agreement in view of Rules 67 and 191 of the Registration Rules (Kerala), though it has been held by this Court on several occasions that such an agreement does not constitute a valid marriage. See the Bench decision in *Kali v. Kamalakshi Amma* 1967 KLT 1063. The rule making authority should introduce appropriate amendments to the Rules under the Registration Rules or issue appropriate instruction for safeguarding the plight of unfortunate girls who are misled and who are unaware of the gravity of the consequences of the agreement. There is no point or purpose in registering a document which has no value in the eye of law. It will not be altogether out of context to note that in the instant case the poor girl did not even know Malayalam and she is a party to the so called marriage agreement in Malayalam, but this Court saw to it that they are duly married.

2. With effect from 29-2-2008 the Kerala Registration of Marriages (Common) Rules, 2008 has come into force. As per Rule 6, the marriages are compulsorily registerable, irrespective of religion of the parties, unless the registration is otherwise required under any other statute like the Special Marriage Act. Thus a marriage solemnised as per the Special Marriage Act, 1954 need not be registered before the local Registrar of Marriages. The local Registrar of Marriages under the Rules is the Secretary to the Panchayat, Municipality, Corporation, as the case may be. Therefore, in view of the introduction of the Kerala Registration of Marriages (Common) Rules, 2008 the Government should seriously think of amending the Registration Rules prohibiting registration of agreements styled as marriage agreements. In other words, registration of marriage and the agreement thereof shall be made only before the Marriage Registration Officer (Local Registrar of Marriages) under the Kerala Registration of Marriage (Common) Rules, 2008. Such a legislative prescription is urgently required so as to save the poor girls, who do not have adequate legal literacy.