
(2022) 04 KL CK 0112

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6735 Of 2022 & O.P.(FC) No.127 Of 2022

T.Anjana

APPELLANT

Vs

J.A.Jayesh Jayaram

RESPONDENT

Date of Decision : 07-04-2022

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Family Courts Act, 1984 — Section 9, 10, 10(3), 14
Kerala Registration of Marriages (Common) Rules, 2008 — Rule16

Citation : (2022) 04 KL CK 0112

Hon'ble Judges : A.Muhamed Mustaque, J;C.R Sophy Thomas, J

Bench : Division Bench

Advocate : M.R.Rajesh, Shahna Karthikeyan

Final Decision : Disposed Of

Judgement

A.Muhamed Mustaque, J.

1. These cases tell a tale of an unscrupulous litigant who considers himself as the dominus litis, capable of knocking down all the directions in the judgments of this Court as well as the Apex Court in one stroke by not pressing his petition for restitution of conjugal rights filed before the Family Court, Thiruvananthapuram. First, we shall advert to the facts of the case before adverting to who is the master of the case in the Family Court jurisdiction.

2. Anjana, the petitioner in both cases, met J.A.Jayesh Jayaram when she went to take driving lessons at Shivanada Motor Driving school. Their intimacy developed, leading to the registration of their marriage before the Local Registrar under the Kerala Registration of Marriages (Common) Rules, 2008 (hereinafter referred to as the ("Marriage Rules")). Anjana's parents appear to have objected to the relationship. Alleging her illegal detention, Jayesh Jayaram approached this Court in W.P.(Crl.) No.299/2015 seeking the writ of habeas corpus. It was alleged by Jayesh Jayaram that he married Anjana on 20.5.2015 at J.M.Hall, Vellarada, Thiruvananthapuram and the marriage was registered under the

Marriage Rules before the Local Registrar of Marriages (Common) of Vellarada Grama Panchayat on 29.5.2015. Ext.P2 in both cases is the certificate of marriage issued by the Local Registrar under the aforesaid Rules. Anjana was produced before this Court pursuant to the direction in that case. On interaction, she denied having contracted the marriage with Jayesh Jayaram on 20.5.2015 at J.M. Hall, Thiruvananthapuram. According to her, she was forced to sign the register on pressure exerted by Jayesh Jayaram. She also stated before this Court that she was not under any illegal confinement. Based on the statement made before this Court by Anjana, this Court dismissed the habeas corpus writ petition on 14.7.2015.

3. Anjana moved the Local Registrar to cancel the registration of her marriage with Jayesh Jayaram. This was considered by the Local Registrar of marriage pursuant to the direction of this Court in W.P.(C) No.36328/2015. Noting that there was no fraud or manipulation, the Local Registrar rejected the request for cancellation vide order dated 22.12.2015.

4. Anjana approached the Appellate Authority-Deputy Director of Panchayat, Thiruvananthapuram, challenging the order of the Local Registrar. The Appellate Authority, noting that no customary ceremonies were followed in the marriage, found the registration of the marriage to be illegal. Accordingly, ordered the cancellation of the registration as per the order dated 28.04.2016. In the meanwhile, Jayesh Jayaram approached the Family Court, Thiruvananthapuram, for restitution of conjugal rights. This was numbered as O.P.No.85/2016.

5. Jayesh Jayaram, aggrieved by the order of the Appellate Authority cancelling registration, approached the Director of Panchayat in revision. Simultaneously, he appears to have moved the Government as well, challenging the order of the Appellate Authority. The Principal Secretary of the Local Self Government Institution of Government of Kerala vide order dated 30.1.2017 interfered with the order of the Appellate Authority and directed the revisional authority, the Director of Panchayat to ensure that the order of the Appellate Authority is withdrawn.

6. Anjana approached this Court in W.P.(C) No.20897/2017, challenging the order of the Principal Secretary, Local Self Government Institutions, Government of Kerala. Anjana also had raised an objection as to the maintainability of O.P.No.85/2016 on the file of the Family Court on the ground that the Appellate Authority interfered with the registration of marriage in the local register. The Family Court dismissed the objection raised by Anjana. Challenging the above order, Anjana came before this Court in O.P. (FC) No.443/2016. A Division Bench of this Court considered the writ petition filed by Anjana as W.P.(C) No.20897/2017 and O.P.(FC) No.443/2016 together and disposed of both the cases on 23.10.2017. The Division Bench quashed the orders of the Government interfering with the Appellate Authority's order cancelling the registration and also the order of the Appellate Authority and relegated the parties to decide on the validity of the marriage in O.P.No.85/2016. The order of this Court

reads thus:

"The same shall be done untrammelled by Ext.P8 order in I.A No.1300 of 2016 refusing to hold that O.P No.85 of 2016 is not maintainable. We quash Exts.P3, P4, P6,P7 and R5(b) orders as regards the validity of Ext.P2 marriage certificate in W.P.(C) No.20879 of 2017. The validity of the marriage certificate will be dependent on the final verdict in O.P No.85 of 2016."

7. Not satisfied with this Court's order as above, Jayesh Jayaram moved the Apex Court in SLP 1784-1785/2018. The Apex Court disposed of both cases at the SLP stage with the following orders:

"In the impugned judgment the High Court made it very clear that the validity of the marriage will depend upon the final verdict in O.P.No.85 of 2016, which is pending before the Family Court, Thiruvananthapuram.

Mr. V.K. Biju, learned counsel for the petitioner apprehends that since Exhibits P3, P4, P6, 27 and R5 (b) have been quashed, the Family Court will be disabled from rendering a finding.

We find it difficult to appreciate this submission, as the High Court itself has made it clear that the Family Court will be free to decide the validity of the marriage.

In view of the apprehension expressed by the learned counsel for the petitioner, we make it clear that the Family Court will dispose of the case on its own merits, untrammelled by any of the observations or findings in the impugned judgment.

The Special Leave Petition is, accordingly, disposed of.

Pending application(s), if any, shall stand disposed of."

8. Thereafter, the trial commenced before the Family Court. PWs 1 to 7 were examined on the side of Jayesh Jayaram. He also produced documents. Anjana was also examined as DW1. Before conclusion of the evidence, Jayesh Jayaram, filed a memo not pressing the petition. Accordingly, the Family Court dismissed O.P.No.85/2016 on 17.3.2018 as not pressed.

9. Anjana approached this Court in review as against the common judgment dated 23.10.2017. Contending that in view of the action of Jayesh Jayaram, not pressing the petition for restitution of conjugal rights, the judgment of this Court dated 23.10.2017 in W.P.(C) No.20897/2017 will have to be reviewed to uphold the cancellation of the registration of the marriage in the local register. This Court, noting that the review jurisdiction cannot be extended to take note of subsequent events, dismissed the review petition with liberty to agitate the grievances in separate proceedings.

10. Anjana, thereafter, filed W.P.(C) No.6735/2022 challenging the registration of the marriage. Anjana also filed O.P.(FC) No.127/2022 invoking Article 226 of the Constitution challenging the judgment of the Family Court dismissing the petition

for restitution of conjugal rights filed by Jayesh Jayaram without endorsing that there was no valid marriage or marital tie.

11. The facts as above would go to show that Jayesh Jayaram considering himself to be the master of the proceedings before the Family Court was able to take away the substratum of all earlier directions in the judgments given by this Court as well as the Apex Court. We are now called upon to decide this case of peculiar facts on its maintainability at the first instance. The learned senior counsel appearing for Jayesh Jayaram questioned the maintainability of both cases before this Court. According to the learned senior counsel, as against the registration of marriage in the local register, the remedy lies in an appeal under Rule 16 of the Kerala Registration of Marriages (Common) Rules, 2008, before the Appellate Authority. It is also submitted that a petition under 227 is not maintainable as against the final order of the Family Court.

12. The learned counsel for the petitioner, on the other hand, pointing out the earlier orders, would submit that this Court has to treat the action of not pressing of the petition as the issue being decided against Jayesh Jayaram and consequently, to hold that the registration by the Local Registrar will have to be cancelled.

13. We now have to decide the consequence of not pressing of the petition filed by Jayesh Jayaram for restitution of conjugal rights. That will have to be addressed in light of the challenge made as against the order of the Family Court. Before that, we shall advert to the challenge now made for granting registration of the marriage between Jayesh Jayaram and Anjana by the Local Registrar. As we adverted to earlier, this Court as well as the Apex Court allowed the party to agitate regarding the validity of the marriage in the petition filed by Jayesh Jayaram for restitution of conjugal rights. On dismissal of the petition as not pressed, Anjana came before this Court with a review. This Court refused to invoke review jurisdiction. This Court as well as the Apex Court found that fact finding can be entered upon by the Family Court and depending upon the outcome of such fact finding, the registration can be cancelled or retained. In such circumstances, a separate writ petition challenging the registration cannot be entertained by this Court. If it is entertained, that would amount to reviewing the earlier decision of this Court in W.P.(C) No.20897/2017.

14. We come back to O.P.(FC) No.127/2022, challenging the order of the Family Court. Can the Family Court allow Jayesh Jayaram to not press the petition overlooking the direction of this Court as well as the Apex Court? We are of the view that the Family Court could have allowed "not pressing" to the extent of Jayesh Jayaram giving up the relief sought, however, that could not have restrained the Family Court from deciding the substantial issue regarding the validity of the marriage.

15. Who is the master of the case in the Family Court? Is it the petitioner or the Court? In an ordinary Civil Court, where the rights and obligations of the parties

are decided, the plaintiff is the master of case. The Family Court is governed by the Family Courts Act and Rules. In the Family Court, the enquiry is more focussed on the parties and not on the process of litigation. The Family Court is not bound by the rigidity of the Rules of Procedure followed in adversarial litigation. Section 10(3) of the Family Courts Act, 1984, states as follows:

“Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.”

16. Recently, we have referred to the functions of the Family Court. In *Nisha Haneefa v. Abdul Latheef, Ors.* [2022 ICO 320], it is appropriate to refer to paragraphs 4 to 6, which reads thus:

“4. A combined reading of Sections 9, 10 and 14 would clearly bring out the point that the Family Court is not the mirror of an ordinary Civil Court. The powers of the Family Court can be summarized as follows:

(i) Adjudicative power following the rules of procedure as applicable under the adversarial system.

(ii) Proactive role for settlement of disputes between the parties.

(iii) Inquisitorial power to enquire into the truth of the matter.

5. The above enumerated powers are only for the Family Court. That distinguishes it from an ordinary Civil Court. More interestingly, it is to be noted that as reflected from Section 10(3), the Family Court is given the power to lay down its own procedure with a view to arrive a settlement, or to enquire into the truth of the facts alleged. The power to choose the mode of procedure itself sufficiently indicates that the Family Court is not bound by any strictness of procedure of law as referred in the Code of Civil Procedure, the Indian Evidence Act, Criminal Procedure Code etc. What is essential in a dispute before the Family Court is that the Family Court is only to devise procedure for fair conclusion of the proceedings. If the Family Court is able to adhere to the “fairness”, the decision or order of the Family Court cannot be questioned in a higher Court. The Family Court is given complete freedom in devising fair procedure for speedy resolution of disputes before the said Court.

6. The role of the presiding officer in the Family Court needs to be stressed herein. As already adverted to, in all matters, what is required by the Family Court is a fair approach in dealing with the cases before it. In many of the matters like custody, maintenance, matrimonial status etc., the responsibility of the Court is to find out the truth. The focus of the enquiry is to be on the objectives to be secured rather than focusing on the subjective element of the dispute. The very purpose of entrusting family disputes to the Family Court from ordinary Civil Court is to focus not on the rights and obligations of the disputants but on the interest of the parties and welfare of the subject of the dispute. It is

also to be remembered that the disputes amenable before the Family Court sometimes may require to follow the rules of adversarial litigation. But that does not mean that the Family Court Judge is restrained from conducting enquiry related to the truth as, in an inquisitorial model. To find out the truth, the Family Court does not require the consent of the parties. If fairness is reflected in any of the approaches, such an approach is clothed with legal protection.”

17. The party may be able to not press the relief sought. However, the party cannot refrain the Family Court from the finding of truth. The Family Court cannot remain a mute spectator of the proceedings before it. If the Family Court is of the view that the opposite party would be affected or impacted, consequent upon not pressing the petition, it shall proceed with the case to find out the truth as mentioned in the Nisha Haneefa's case (supra). The scope of enquiry in the Family Court is not confined with the evidence brought before it by the parties. The Family Court is competent to embark upon any enquiry to elicit the truth. The master of the proceedings before the Family Court is the presiding officer of the Family Court and not the parties. So long as the principles of fairness are followed and adhered to, the power of the Family Court cannot be questioned by the parties.

18. The Family Court ought not to have accepted the request to dismiss the petition in toto without entering into the findings regarding the status of the marriage. Anjana was not afforded an opportunity to express her views by the Family Court before acting on the memo filed by Jayesh Jayaram not pressing the case. In light of this Court order as well as the Apex Court's order, the Family Court ought to have afforded an opportunity to Anjana to state her views before the Court on the motion moved by Jayesh Jayaram to 'not-press the case'. When rights and obligations of the parties to a litigation are crystalised through the order of the Court, the basis of such an order cannot be whittled down by one party by his unilateral decision of not pressing the case. The Court has to act on such a decision of not pressing by one party as holding that the issues are decided against such a litigant.

19. In the light of the peculiar facts, we are of the view that the Family Court failed in exercising the jurisdiction in accordance with the Family Courts Act, 1984 and the direction of this Court and the Apex Court.

20. A Division Bench of this Court in Muhammed Master v. Abu Haji [1981 KLT 578] and Mariyam v. Vijayarajan [2015 (1) KLT 341] have noted the effect of not pressing the suit. According to the Division Bench “not pressing would have the effect of the issue being decided against the litigant who does not press and in favour of the opponent”.

The inevitable conclusion, therefore, is that the Family Court could not have dismissed the petition for restitution of conjugal rights without going into the question of validity of the marriage. In light of the earlier judgments of this Court as well as the Apex Court, the issue regarding validity of the marriage will have

to be decided by the Family Court. In that, the Family Court will have to note the stand taken by Jayesh Jayaram not pressing the petition. We, therefore, interfere with the impugned judgment in O.P. (FC) No.127/2022, to the limited extent for not deciding on the validity of the marriage. We direct the Family Court to pronounce the judgment on the validity of the marriage in light of the stand taken by Jayesh Jayaram not pressing the same. Needful shall be done within four weeks from the date of appearance. The parties are directed to appear before the Family Court on 18.4.2022. O.P.(FC) No.127/2022 is disposed of as above. W.P.(C) No.6735/2022 is disposed of with the observation that cancellation or retention of the registration of the marriage would depend upon the outcome of the judgment of the Family Court in O.P.No.85/2016. No order as to costs.