
(2016) 08 KL CK 0040
In the High Court Of Kerala
Case No : WP (Crl.) No. 294 of 2016

Thankamma Koshy

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-08-2016

Acts Referred:

Special Marriage Act, 1954 — Section 13

Citation : (2016) 4 CivCC 314 : (2017) 1 DMC 603 : (2016) 4 ILRKerala 103 : (2016) 4 KerLJ 15 : (2016) 3 KLT 978 : (2016) 4 RCRCivil 702

Hon'ble Judges : K. Surendra Mohan and Mary Joseph, JJ.

Bench : Division Bench

Advocate : P.Sareena George and Ann Susan George, Advocates, for the Petitioner; Government Pleader, N. Suresh, Advocate, for the Respondent Nos. 1 to 4

Final Decision : Disposed Off

Judgement

K. Surendra Mohan, J.—The grandmother of Neenu Elizabeth Abraham, aged 19 years, who is the daughter of her eldest son, Abraham Koshy, has filed this writ petition seeking the issue of a writ of habeas corpus for the release of the detainee from the custody and detention of the 5th respondent.

2. The petitioner's son, Abraham Koshy died on 6.7.2002 when his daughter was 5 years old. The petitioner has been residing with the family of her younger son Thomas Koshy at Nalanchira, Thiruvananthapuram. The mother of the detainee got remarried in the year 2004 and is in Kuwait along with her husband. The detainee had studied up to her 10th standard in Kuwait. For her plus 2 education, she was brought to India. After completing her plus 2 course, she has joined a degree course, B.A. Animation, in the School of Media and Designing, Puthupadi, which is functioning under the Eldo Mar Baselious College, Kothamangalam. She was attending to her studies residing in a Home Stay conducted by one James Villayil, Vulavoor Junction, Puthupadi. During vacations, the detainee used to be either in the house of the petitioner or at her mother's house.

3. According to the petitioner, she got information in the above circumstances on 11.8.2016 from the owner of the Home Stay at Puthupady that the detainee had left the place without their permission. Both the petitioner and her younger son tried to contact her over mobile phone. In the evening when they contacted her, she told the petitioner's younger son that she was on her way to Chengannur to her mother's paternal home. However, she did not reach there. In the above circumstances, she complained to the police. Crime No. 1875 of 2016 was registered. Thereafter she received information that she was abducted by the 5th respondent who is working as a taxi driver at Thiruvananthapuram. The investigation conducted by the Police revealed that she was at a house in Valiyamala along with the 5th respondent. It is alleged that though the petitioner's family members had gone to the house of the 5th respondent, he did not permit them to see the detainee. Therefore, contending that the 5th respondent had no right to detain the detainee, this writ petition is filed.

4. On 16.8.2016, we had passed an order directing production of the detainee before us today. Accordingly, the detainee has appeared before us along with the 5th respondent. We have interacted with the detainee. She has handed over to us in Court, a Marriage Certificate issued by the SNDP Yogam, Nedumangad Union, Pazhakutty P.O., Nedumangad, SNDP Yogam Branch No. 1386-Chandramangalam. The Certificate is dated 13.8.2016. It is certified by the Secretary of the SNDP Yogam that the marriage of the 5th respondent to the detainee was solemnized under the auspices of the Branch on 12.8.2016 between about 9.30 a.m. and 10 a.m. at the SNDP Sakha office, Anad. It is also stated that the marriage is registered in their Marriage Register Book No. 1. The detainee has also produced before us the acknowledgment cum receipt for money dated 12.8.2016 issued under Section 51 of the Special Marriage Act, 1954 evidencing the fact that the petitioner and the 5th respondent have given notice of their intention to get married. Therefore, we are informed that the parties would be in a position to register their marriage on any day after 12.9.2016. The detainee as well as the 5th respondent also informs us that they have been living together as husband and wife ever since their marriage on 12.8.2016 believing that the said marriage was legal.

5. We have permitted the petitioner to interact with the detainee in Court. After such interaction, the detainee maintains that she has got married to the 5th respondent and that she wants to live her life with him. However, we notice that no legally valid marriage has taken place between the detainee and the 5th respondent.

6. It is true that the SNDP Yogam, Nedumangad Union has issued a Certificate certifying that the detainee and the 5th respondent had got married on 12.8.2016. But, the said Certificate is misleading and has no validity in the eye of law. This is for the reason that the 5th respondent is a Hindu while the detainee is a Christian. As per the Certificate, the marriage is alleged to have been conducted at the Sakha Office. How a marriage could be conducted at the Sakha

Office of the SNDP Yogam is also not clear. We do not know on what basis such a certificate has been issued by the SNDP Yogam certifying that the parties had got legally married. We do not find from the Certificate that even a traditional marriage has been conducted. What appears from the same is only that the 5th respondent and the detainee had got married at the SNDP Sakha Office. No law, religious custom or practise, to our knowledge, permits such a marriage.

7. It is a matter of concern for us that an organisation like the SNDP Yogam, which is expected to conduct its activities in a legal and responsible manner, has issued such a misleading certificate as in this case. The detainee and the 5th respondent have been living together as husband and wife under the mistaken belief that they had got legally married and that they were husband and wife. The SNDP Yogam ought to have known that a marriage to be legally valid should either be conducted in accordance with the traditional and religious rites of a community or should be in accordance with the provisions of the law relating to marriages. When the parties belong to two different and distinct religions, a legally valid marriage could be conducted only by having the same registered under the Special Marriage Act, 1954. The practise of issuing such misleading Certificates by responsible Organisations like the SNDP Yogam is, to say the least, unbecoming of their social status. We are constrained to make the above observation because of the fact that, we have noticed in another case, that was disposed of by us, after having a proper marriage under the provisions of the Special Marriage Act conducted, that the parties had earlier got married as per some ceremony conducted at the Sivagiri Mutt. On the basis of a Certificate issued by the said institution, the marriage was also registered under the provisions of the Kerala Registration of Marriages (Common) Rules, 2008 by the Local Authority concerned. Such activities create confusion in the minds of the common man, who places implicit trust in such Organisations and the functionaries of the Local Authorities. It is for such functionaries to exercise due diligence and care while issuing Certificates of like nature so as to ensure that the common man is not misled. We have come to know about the present Certificate only because this Writ Petition has come up before this Court. There could be other instances where the parties continue to live as husband and wife under the mistaken belief that their relationship was legal and valid. The progeny of such marriages would however be illegitimate. Problems would arise regarding succession where one or the other of the parties die or where the parties separate because of disputes between them. The situation that may arise could give rise to various other complications also. Therefore, it is only appropriate that the local authorities as well as such social Organisations exercise restraint and issue Certificates of like nature only after ensuring that a legally valid marriage has taken place.

8. In the present case, as already noticed above, since no valid marriage has taken place, it is necessary that the parties register their marriage in accordance with the provisions of the Special Marriage Act, 1954 without further delay. As noticed above, they have already given notice of their intention to get married.

They shall therefore have their marriage solemnized after the expiry of the statutory waiting period of one month and shall produce the Certificate of their marriage before us.

9. This Writ Petition is accordingly disposed of with the following directions:

i) The first respondent is directed to issue necessary guidelines to the Local Authorities entrusted with the duty of registering marriages under the Kerala Registration of Marriages (Common) Rules, 2008, instructing them not to register marriages without ensuring that the traditional or religious marriage alleged to have been conducted was proper and valid in law. In other words, for accepting a traditional marriage as valid, it is necessary that the parties should belong to the same religion and that they are persons entitled to get married in accordance with the rites of their religion. It is also necessary to ensure that the marriage was conducted in accordance with the traditional religious rites and rituals associated with the performance of marriages and at places where such ceremonies are permitted by the customs and practices of such religion. A certificate issued by the competent religious functionary certifying to the above facts could be accepted as proof of such a traditional marriage.

ii) Appropriate orders shall be issued regulating the manner in which Certificates are to be issued by the Organisations like the SNDP Yogam, Sivagiri Mutt and other similar Organisations certifying that marriages between persons belonging to two different religions were conducted under the auspices of such Organisations.

iii) The detinue as well as the 5th respondent shall have their marriage registered under the provisions of the Special Marriage Act, 1954 and shall produce a copy of such certificate of Registration before us on 22.9.2016. They shall be present in Court on the said date. In the meantime, since the detinue and the 5th respondent have been living together as husband and wife on the strength of the Marriage Certificate issued by the SNDP Yogam, they are permitted to reside together.

10. Post on 22.9.2016 for production of the Marriage Certificate.