



2024/KER/2629
C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 10TH DAY OF JANUARY 2024 / 20TH POUSHA, 1945

WP(C) NO. 9162 OF 2015

PETITIONER:



BY ADVS.

SRI.K.V.PAVITHRAN

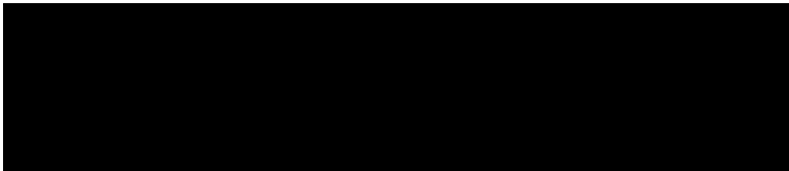
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL

RESPONDENTS:

1 LOCAL REGISTRAR FOR BIRTHS AND DEATHS & MARRIAGES
VATAKARA MUNICIPALITY, P.O.VATAKARA,
KOZHIKODE DISTRICT - 673 101.

2 THE SECRETARY TO GOVERNMENT
DEPARTMENT OF URBAN AFFAIRS,
THIRUVANANTHAPURAM - 695 001.

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BY ADV.

SRI. B.S. SYAMANTAK , GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
10.01.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**“C.R.”****P.V.KUNHIKRISHNAN, J.****-----
W.P.(C).No.9162 of 2015
-----****Dated this the 10th day of January, 2024****JUDGMENT**

A Muslim marriage is conducted in accordance with their personal law and thereafter registered under the Kerala Registration of Marriages (Common) Rules, 2008 (hereinafter referred as Rules 2008). Subsequently, if the husband pronounces talaq in accordance with his personal law, he can remarry without removing the entry in the register of marriage maintained under Rule 2008, because his personal law permits more than one marriage in certain situations, but that divorced Muslim lady cannot remarry till the marriage entry as per Rule 2008 is removed by approaching a competent court of law. Is there any other remedy to remove the entry made as per Rule 2008 is the point to be decided. If a law abiding Muslim couple registered their marriage as per Rule 2008 and subsequently



the husband pronounce talaq, can the registration of marriage as per Rule 2008 be a burden to the Muslim women alone? When such discrimination is pointed out, is it not the duty of the constitutional court to step in? These are the points to be decided in this case.

2. Marriage between the 3rd respondent and the petitioner was solemnized on 30.12.2012 at Busthaniya Shadi Mahal, Vatakara, and the marriage was registered before the 1st respondent as Registration No.44/2013 on 17.01.2013 is the submission. Ext.P1 is the Certificate of Marriage. It is submitted that the marital relationship between the petitioner and the 3rd respondent did not last long. Consequently, the marriage between the petitioner and the 3rd respondent was dissolved by the 3rd respondent by pronouncing Talaq from Doha, Qatar in the presence of witnesses on 30.10.2014 and it was communicated to the father of the petitioner on 02.11.2014. Ext.P2 is the Talaq issued by the 3rd respondent. Hence it is submitted that, in the light of Ext.P2, the marriage between the petitioner and the 3rd respondent was dissolved with effect from



30.10.2014. It is also submitted that the 3rd respondent provided maintenance for the Iddah period and future maintenance as well, as evidenced by Ext.P3 agreement. The divorce of the marriage was duly intimated to Thalasseri Mahal Khazi and the Divorce certificate issued by him is also produced as Ext.P4 is the submission. After the dissolution of the marriage, the petitioner approached the 1st respondent with an application praying to make necessary entries in the Marriage Register regarding the dissolution of the marriage. Ext.P5 is the application. Ext.P6 is the acknowledgment showing the receipt of Ext.P5. But, it is submitted that the 1st respondent, despite Ext.P5 application, failed to make necessary entries in the Marriage Register regarding the dissolution of marriage. When the petitioner enquired about the reason for his failure to make entry as requested, it was stated by the 1st respondent that the Rules, 2008 does not contain any provision authorising him to make such entry. It is the case of the petitioner that, such a stand is illegal, and want of provision can not be a reason for making entry in the Marriage Register. Hence this Writ petition is filed with



the following prayers:

“(i) Issue a writ of mandamus or any other writ or order or directing the 1st respondent to record the fact of divorce as revealed from Ext.P5 against the entry of marriage earlier recorded in the register of marriage by 1st respondent.

(ii) issue any other order or direction to the 2nd respondent to issue necessary direction to the first respondent if need be.

(iii) any other order or direction that this Hon'ble Court deems fit and proper under the circumstances of the case.”

3. Heard the learned counsel appearing for the petitioner and the learned Government Pleader.

4. It is an admitted fact that the marriage between the petitioner and the 3rd respondent is registered under the Rules 2008. It is also an admitted fact that there is no provision under the aforesaid Rules to register a divorce. Ext.P2 is the Talaq pronounced by the 3rd respondent and Ext.P3 is the agreement executed by the 3rd respondent with the father of the petitioner about the payment of legal dues to the petitioner. The Talaq was intimated to the Thalasseri



Mahal Khazi as evidenced by Ext.P4. The petitioner submitted Ext.P5 application before the 1st respondent for making necessary entries in the records maintained in the Register about the divorce. But there is no provision in the Rules 2008 to record the divorce. Then what is the remedy? In such a situation, I am of the considered opinion that the principle in the general power under Section 21 of the General Clauses Act, 1897 can be adopted. It will be better to extract Section 21 of the General Clauses Act:

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws

Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.”

5. Section 21 of the General Clauses Act says that, where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is



conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. The petitioner is a divorced wife. According to the petitioner, the 3rd respondent pronounced Talaq as evident by Ext.P2 and it is informed to the authority concerned and the authority concerned issued a Divorce certificate as evident by Ext.P4. In such a situation, a divorced woman shall not be handicapped by registering the marriage, following the registration rules under the Rules 2008. It is true that there is no power to record the divorce in the Rules 2008. But I am of the considered opinion that such power is inherent to the authority concerned. Such power is ancillary to the power to register the marriage. This point is considered by this Court in **Jithin Varghese Prakash v. Registrar of Marriage** [2019 (3) KLJ 603].



6. Simply because a person registered the marriage as per Rules 2008, she need not be dragged to a court of law for making entries in the Marriage Register regarding the divorce if she obtained the same as per her personal law. If there is the power to register the marriage, the power to record the divorce is also inherent and ancillary to the authority who registers the marriage, if there is a divorce under the personal law. A divorced Muslim woman need not be sent to a court of law for recording the Talaq if it is otherwise in order as per the personal law. The officer concerned can record the Talaq without insisting on a court order. I think that there is a lacuna in Rule 2008 in this regard. The legislature should think about the same. The registry will forward a copy of this Judgment to the Chief Secretary of the state to do the needful in accordance with law.

7. There is a dialogue in the Oliver twist, one of the



famous novels by Charles Dickens. It is like this; "...If the law supposes that....the law is an ass – a idiot. If that's the eye of the law, the law is a bachelor; and the worst I wish the law is that his eye may be opened by experience-- by experience.....". The law is an ass is a derisive expression said when the rigid application of the letter of law is seen to be contrary to common sense. In such a situation, I am of the considered opinion that, the constitutional court should step in.

8. Therefore, this Writ petition can be disposed of directing the 1st respondent to consider Ext.P5 with notice to the 3rd respondent and if the 3rd respondent concedes the Talaq, consequential entry shall be made in the Register of Marriage. If there is any dispute regarding the validity of divorce, the Registrar need not record such divorce in the Register without an order from the competent court.

Accordingly, this Writ petition is disposed of in the



following manner:

1. The 1st respondent is directed to consider Ext.P5 and pass appropriate orders in it, with notice to the 3rd respondent in the light of the observations in this judgment, as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a stamped certified copy of this judgment.

2. Petitioner will produce a certified copy of this judgment before the 1st respondent for compliance.

3. The registry will forward a copy of this judgment to the Chief Secretary, State of Kerala, for the reason mentioned in Paragraph 6 of this judgment.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**



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APPENDIX OF WP(C) 9162/2015

PETITIONER EXHIBITS

EXHIBIT P1. TRUE COPY OF THE MARRIAGE
CERTIFICATE DATED 17.01.2013.

EXHIBIT P2. TRUE COPY OF THE TALAQ
ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P3. TRUE COPY OF THE
AGREEMENT DATED 02.11.2014.

EXHIBIT P4. TRUE COPY OF DIVORCE
CERTIFICATE ISSUED BY THALASSERI
MAHAL KHAZI, DATED 30.10.2014.

EXHIBIT P5. TRUE COPY OF APPLICATION.

EXHIBIT P6. TRUE COPY OF THE
ACKNOWLEDGMENT DATED 18.11.2014.

RESPONDENTS EXHIBITS : NIL

//TRUE COPY//

PA TO JUDGE