

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 5745 of 2022**

=====

RICHHA W/O KUSHAL MISTRY AND D/O HEMANTKUMAR ADHVARYU
Versus
STATE OF GUJARAT

=====

Appearance:

MR ANAND R PATEL(7352) for the Petitioner(s) No. 1
MR CJ VIN(978) for the Respondent(s) No. 2
NOTICE SERVED BY DS for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 12/04/2022

ORAL ORDER

1. By way of this writ application, which is filed under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs :-

"The Petitioner therefore prays that this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction and be further pleased -

(A) To direct the Respondents to permit the Petitioner either to rectify the memorandum of marriage or to file a fresh memorandum of marriage and consequently direct the Respondent to issue a fresh marriage certificate (reflecting the correct date of marriage, i.e. 19.12.2021);

(B) To direct the Respondents to cancel the existing marriage certificate dated 26.07.2021 (Annexure-1) and issue a fresh marriage certificate (reflecting the correct date of marriage, i.e. 19.12.2021);

(C) To pass such other and further orders as this Hon'ble Court deems fit and proper in

the facts and circumstances of the case."

2. The writ applicant herein seeks direction upon the respondent no.2 - Registrar of Marriages ('Registrar") to correct the date of marriage in the writ applicant's marriage certificate bearing no.WZ/2021/2522 dated 26.07.2021. The writ applicant by way of this writ application seeking change in the marriage certificate from 17.07.2021 to 19.12.2021.

3. Mr. Anand Patel, the learned advocate appearing for the writ applicant stated that the writ applicant is living in Surat and her marriage was scheduled to take place on 17.07.2021 with Mr. Kushal Batukkumar Mishtri, who is a permanent residence permit holder of Germany and is working there as a Technical Development Engineer. However, due to pandemic of COVID-19 and the restrictions imposed by the Government on public gathering, the marriage was scheduled in a banquet hall with a very small number of relatives attending the marriage. Therefore, the marriage invitation was also not prepared. Since, the marriage ceremony was to be held in a banquet hall (i.e. in a closed premises) in presence of very few relatives, they performed the ceremonies of exchanging garlands, tying mangalsutra and applying sindhoor, copy of the photographs are duly annexed at Annexure-4 of the writ application. However, the ceremony of "datta homa" and "Saptapadi" (i.e. taking seven steps around the sacred fire) were not performed. It was mutually decided by the family

members of bride and groom that after the cases of COVID-19 decreases, the family would organize another function in a party plot whereat the ceremony of "datta homa" and "Saptapadi" would be performed in presence of various relatives and friends. The said subsequent function was scheduled to be held on 19.12.2021 whereat the ceremonies of "datta homa" and "saptapadi" were performed.

4. Mr. Anand Patel, the learned advocate appearing for the writ applicant has relied on the order passed by the Co-ordinate Bench of this Court in Special Civil Application No.19647 of 2019 by order dated 09.01.2020. The Co-ordinate Bench of this Court in paragraph Nos. 13, 14 and 15 has held and observed thus :-

"[13] In the situation as arisen in the present case, it cannot be said that the respondent authority is at fault in taking the impugned decision. The respondent No.2 was within his power to issue the certificate and was also within his power to pass the impugned order dated 27.09.2019 as there is no provision of law which can enable the respondent No.2 to take cognizance of the facts prevailing and to entertain an application of the petitioner to rectify the marriage certificate. At this stage, the Court is bound to invoke Article 226 of the Constitution of India to overcome the situation faced by the petitioner which prevents the petitioner from co-habiting with her husband in Germany.

[14] The petitioner is left without remedy as on the one hand it cannot be said that

respondent No.2 has fallen in error for invoking writ of mandamus, on the other hand, the date of marriage in the marriage certificate does not reflect the date of marriage accordingly. This is attributable to the factual prevalent circumstances in which petitioner has no role to play. It is this situation which the Court deems it fit to invoke Article 226 of the Constitution of India for remedy a situation.

[15] In the peculiar facts and circumstances of the case, the Court deems it to be a fit case to interfere and direct the respondent No.2 to quash and set aside the impugned order dated 27.09.2019 and direct the respondent No.2 to cancel the certificate of marriage No.1727 dated 18.12.2017. At the same time, permitted the petitioner to make a fresh application with all the necessary details about the ceremonisation of marriage on 27.01.2018. The respondent No.2 shall consider such application afresh and treat the same to be made in time without being influenced by the fact of issuing earlier certificate as the same is treated to be cancelled and the decision dated 27.09.2019, which is ordered to be quashed and set aside and issue fresh certificate of marriage."

5. Mr. C.J. Vin, the learned advocate appearing for the respondent No.2 authority submitted that if an application seeking change in the date in marriage certificate would be preferred before the respondent authority, the authority would decide the same within a period of four weeks from the receipt of this order.

6. Having heard the learned advocates appearing for the parties.

7. In the facts and circumstances of the present case, this Court is inclined to direct the respondent no.2 under exercising its extraordinary jurisdiction under Article 226 of the Constitution of India to consider the application which would be preferred by the writ applicant seeking change in the date of marriage certificate from 17.07.2021 to 19.12.2021, in absence of any provisions of law enabling the respondent no.2 to rectify the marriage certificate. The writ applicant is directed to prefer afresh application within a period of one week before the respondent No.2 - authority seeking change in the memorandum of marriage from 17.07.2021 to 19.12.2021. Once such an application is preferred by the writ applicant, the respondent authority is directed to carry out necessary changes considering the said application and issued a certificate with the changed date in the marriage certificate as 19.12.2021 in the marriage certificate. Consequently, the earlier marriage certificate would be quashed and set-aside. Once the fresh marriage certificate is issued, the earlier certificate would stands cancelled. The said exercise be undertaken by the respondent no.2 authority preferably within a period of two weeks.

8. With the aforesaid direction, the present writ applicant stands allowed to the aforesaid extent.

Direct service, Today is permitted.

(VAIBHAVI D. NANAVATI, J)

Pallavi