

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. HARILAL

&

THE HONOURABLE MRS. JUSTICE ANNIE JOHN

MONDAY, THE 26TH DAY OF AUGUST 2019 / 4TH BHADRA, 1941

OP (FC).No.238 OF 2019

AGAINST THE ORDER DTD 28.3.2019 IN I.A.695/19 IN OP
1617/2016 OF FAMILY COURT, THRISSUR

PETITIONERS/PETITIONERS:

- 1 NISHAD
AGED 38 YEARS
S/O. MOIDUTTY, ASSANARKATH HOUSE, BLANGAD
DESOM, MANATHALA VILLAGE, CHAVAKKAD TALUK,
THRISSUR DISTRICT 680 506
- 2 KHAYARUNNISA,
AGED 62 YEARS
W/O. MOIDUTTY, ASSANARKATH HOUSE, BLANGAD
DESOM, MANATHALA VILLAGE, CHAVAKKAD TALUK,
THRISSUR DISTRICT 680 506

BY ADV. SRI. RAJIT

RESPONDENT/RESPONDENT:

NAJMA,
AGED 28 YEARS
D/O. NOORUDDIN, NALAKATH, ARAKKAL VEETIL, P.O
PAVARATTY, VENMENAD DESOM, VENMENAD VILLAGE,
CHAVAKKAD TALUK, THRISSUR DISTRICT 678 507

R1 BY ADV. SRI. BALAKRISHNAN GOPINATH

R1 BY ADV. KUM. NIHARIKA HEMA RAJ

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
26-08-2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JUDGMENT

Harilal, J.

1. The petitioner herein is the respondent in OP.No.1617/16 as well as the petitioner in I.A.No.695/19 filed therein. The said OP was filed by the respondent seeking a decree for return of money and gold ornaments from the petitioner. The aforesaid OP is being tried along with OP.No.1598/15 filed by the respondent seeking a decree for dissolution of marriage. Hence, the petitioner has filed the aforesaid I.A.695/19 to appoint an Advocate Commission to play a CD marked as Ext.B24, ascertain the contents and report to the Court.
2. The respondent filed objection contending that the contents of the CD is not a relevant fact in the determination of the issue involved in OP.1598/15 or in OP.1617/16. That apart, the respondent herself

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admitted her participation in the programme contained in the CD, but the CD is an edited and stage-managed one. So also, it is contended that a Commission cannot be appointed to appreciate evidence and report to the Court.

3.After considering the objection raised by the respondent, the Family Court dismissed the said application on the finding that the respondent herself had admitted that she participated in that programme along with the petitioner and thereby the fact is proved by her admission. The legality and correctness of the aforesaid finding, whereby the Family Court dismissed the IA and passed Ext.P6 order, are assailed in this OP(FC).

4.Heard the learned counsel Smt.Thulasi Panicker appearing for the petitioner and the learned counsel Kum.Niharika Hema Raj appearing for the respondent.

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5.The question to be considered is, Can an Advocate Commission be appointed to play a CD, evaluate the contents and report to the Court?

6.According to the petitioner, the CD contains a programme televised by a TV channel under the name and style "നിങ്ങൾക്കുമാകാം കോടീശ്വരൻ". The petitioner and the respondent have participated in the above programme. According to the petitioner, in that programme, both of them had some pleasure trips in a house-boat in the backwater of Alappuzha. So it is necessary for the effective disposal of the case that the contents of the CD should be evaluated and reported to court by a Commission.

7. The CD is a piece of evidence produced by the petitioner to prove his contentions in his counter statement. The appointment of a Commission is intended to play the CD, evaluate the contents and

report to the Court. According to Section (3) of the Indian Evidence Act, a fact is said to be proved when after considering the matters before the court, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the particular circumstances of the case, to act upon the supposition that it exists. In other words, the court must make an opinion as to 'proved or not proved', after considering the matters before it. In short, the power of appreciation is vested with the court alone, and it can never be relegated to an Advocate Commission and the court itself must evaluate the contents of a CD. That apart, Section 75 of the CPC, specifies the purposes for which the court can issue a Commission. The purposes include; (a) to examine any person; (b) to make a local investigation; (c) to examine or adjust accounts; (d) to make a

partition; (e) to hold a scientific, technical, or expert investigation; (f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit; (g) to perform any ministerial act. The appreciation of evidence for reporting to the court is not specifically included in the said provision. We are of the opinion that no interpretation, at any stretch of imagination, can be made to include the act of appreciation of evidence for reporting to the court, within the purposes, for which a Commission can be issued, under the said provision.

8. Secondly, we find that, here, the contents of the CD is an edited stage managed programme. Therefore, it cannot be taken as an incident occurred in the real marital life of the participants. It was intended for televising in the TV channels. Therefore, performance

in the programme cannot be taken as a reality in the life of the participants. In the above view, we find that in the instant case, the contents of the CD is not a fact in issue or relevant fact. According to Section 5 of the Indian Evidence Act, 1872, evidence can be adduced in any suit or proceedings to prove the existence or non-existence of every fact in issue or relevant fact only and of no other. In the instant case, the edited stage managed programme in the CD is not a fact in issue or relevant fact in the suit or proceedings.

9.Thirdly, we find that the respondent herself had admitted her participation in the programme in the CD and it would amount to an admission by the party to the extent of participation only and nothing could be proved beyond it. According to Section 58 of the Indian Evidence Act, facts admitted need not be

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proved. There is no illegality or impropriety in the impugned order.

10. In the above analysis, we find that there is no reason to interfere with the impugned order under challenge. Hence this OP(FC) is dismissed.

Sd/-

K. HARILAL

JUDGE

Sd/-

ANNIE JOHN

JUDGE

k kb.

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APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1** TRUE COPY OF THE PETITION IN O.P
1617/2016 FILED BY THE RESPONDENT BEFORE
THE FAMILY COURT THRISSUR
- EXHIBIT P2** TRUE COPY OF THE COUNTER AFFIDAVIT IN
O.P 1617/2016 FILED BY THE RESPONDENT
BEFORE THE FAMILY COURT, THRISSUR
- EXHIBIT P3** TRUE COPY OF THE PETITION FILED BY THE
RESPONDENT IN O.P NO. 1598/2015
- EXHIBIT P4** TRUE COPY OF THE I.A 695/2019 TO APPOINT
ADVOCATE COMMISSIONER.
- EXHIBIT P5** TRUE COPY COUNTER FILED BY THE
RESPONDENT DATED 12-03-2019 IN I.A
695/2019
- EXHIBIT P6** CERTIFIED COPY OF ORDER DATED 28-03-2019
IN I.A 695/2019 IN O.P 1671/2019 OF
FAMILY COURT, THRISSUR.

/True copy/