

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE SMT. JUSTICE P.V.ASHA

THURSDAY, THE 18TH DAY OF FEBRUARY 2021 / 29TH MAGHA,1942

WP(C).No.3421 OF 2021(C)

PETITIONER:

SHITHA V.K,
AGED 25 YEARS,
D/O. SUNDHU.V.K., VENATTUKUNNATHU HOUSE, MALA P.O.,
KAKKATTIRI, PALAKKAD-679 534.

BY ADVS.
SMT.M.KABANI DINESH
SMT.PRIYANKA SEBASTIAN

RESPONDENTS:

- 1 THE DISTRICT REGISTRAR (GENERAL),
OFFICE OF THE DISTRICT REGISTRAR, ALAPPUZHA P.O.,
ALAPPUZHA-688 001.
- 2 THE MARRIAGE OFFICER,
SUB REGISTRAR OFFICE, PULINKUNNU P.O.,
ALAPPUZHA-688 504.
- 3 THE SECRETARY, TRITHALA PANCHAYATH,
THRITHALA P.O., PALAKKAD-679 534.

BY ADV. SMT.PRINCY XAVIER, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
18.02.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner seeks a direction to the respondents 1 and 2 to permit solemnisation and registration of her marriage on digital platform.

2. The petitioner, who belongs to Scheduled Caste community along with one Ajith Joseph, Chathurthiakary, Alappuzha submitted Ext.P3 notice of intended marriage before the 2nd respondent on 04.02.2021, under the Special Marriage Act, 1954. It is stated that petitioner has to report in Queen's University, Belfast, Northern Ireland, United Kingdom, for admission to full time Post Graduate course in Master of Science and Advanced Food Safety in School of Biological Sciences urgently and therefore she is not in a position to wait till the notice period expires.

3. It is stated that the petitioner and Ajith Joseph got married on 15.01.2021 in a private function. Though they approached the the Marriage Officer at Trithala Panchayat for registration of their marriage by submitting Ext.P2 application, the same was not accepted since they belong to different religions. They were informed that they have to undergo marriage under the Special Marriage Act. Ext.P3 notice was submitted thereafter. It is stated that as petitioner has to leave before expiry of the 30 days notice period, Sri.Ajith Joseph, alone would be available before the Sub Registrar on expiry of the notice period. Petitioner states that her physical presence is liable to be exempted and her digital presence be permitted for solemnization and registration of marriage.

4. I heard Smt.Kabani Dinesh the learned

Counsel for the petitioner and Smt.Princy Xavier, the learned Government Pleader.

5. The provisions in the Special Marriage Act, 1954, under Section 5 mandates the parties to the marriage, which is intended to be solemnized under the Act shall give notice in writing to the Marriage Officer in the form specified in the Second Schedule. On receipt of the notice, the Marriage Officer shall cause every such notice to be published as provided in Section 6. Section 7(2) provides that on expiry of thirty days from the date of publication of the notice, the marriage may be solemnized, unless it has been previously objected to under sub-section (1). Section 8 to 10 provides for the procedure on receipt of objections. The procedure for solemnization and issuance of certificate of marriage are dealt with in Section 11 to 13 which read as

follows:

"11. Declaration by parties and witnesses.— Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer.

12. Place and form of solemnization.—(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,— "I, (A), take thee (B), to be my lawful wife (or husband)"

13. Certificate of marriage.—(1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the

parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with."

6. Therefore as per the proviso to Section 12, a marriage is complete and binding on both the parties only on the declaration of either party that they take each other as the lawful wife/husband and that too in presence of the Marriage Officer as well as the three witnesses. It also insists that the marriage if it is not in the office of the Marriage Officer, shall be solemnized within a reasonable distance from the office. It is also relevant to note that Section 13 mandates the Marriage Officer to enter a certificate in the prescribed form in the

Marriage Certificate Book and to get the said certificate signed by the parties to the marriage and the three witnesses. It would not be possible to observe these procedures online, in the absence of the physical presence of both the parties near the Registering Officer and the witnesses.

7. The expression "shall" employed in Section 13 i.e., "The Marriage Officer shall ----" would further show that there cannot be any relaxation for the procedures to be followed in the matter of solemnization as well as the period of notice preceding marriage prescribed under Section 5 of the Act. The consequences of non-compliance of the aforesaid provisions are given in Section 45 as far as witnesses are concerned and in 46 of the Act as far as Marriage Officer is concerned.

"45. Penalty for signing false declaration or certificate.—Every person making, signing or attesting any declaration or certificate required by or under this Act containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in Section 199 of the Indian Penal Code, 1860 (45 of 1860).

46. Penalty for wrongful action of Marriage Officer.—Any Marriage Officer who knowingly and wilfully solemnizes a marriage under this Act,—

(1) without publishing a notice regarding such marriage as required by Section 5, or

(2) within thirty days of the publication of the notice of such marriage, or

(3) in contravention of any other provision contained in this Act,

shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both."

8. The aforesaid provisions would show that the period prescribed for each of the steps leading to the solemnization of marriage warrants strict interpretation and there cannot be any relaxation. The minimum

waiting period for a notice should therefore be 30 days. The contention of the petitioner that she does require the marriage to be solemnised only on completion of 30 days but only requires the solemnization on digital mode cannot also be permitted as there is no provision in the Act which permits the same and there is no provision which permits the procedure in digital platform. The judgment in W.P.(C) No.1839 of 2019 fortifies the above view.

9. I am of the view that unless the provisions contained in the Special Marriage Act are amended, it would not be possible either to relax the mandatory period of notice or to permit marriage in digital form, especially when penal consequences are provided in the Act. Therefore the relief prayed for by the petitioner cannot be

granted.

In the judgment in W.P.(C) No. 2844 of 2021, I have already considered a similar case, where the petitioners therein wanted to get their marriage solemnized and registered before the expiry of the 30 days period or in the alternative to undergo digital marriage. After considering the relevant provisions in the Special Marriage Act, it was dismissed.

Accordingly, the writ petition also is dismissed.

Sd/-

P.V.ASHA
JUDGE

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APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE ADMISSION AND ACCESS SERVICES VIDE APPLICATION NO.00661973 DATED 10.11.2020 OF THE QUEEN'S UNIVERSITY, BELFAST, NORTHERN IRELAND UNITED KINGDOM.
- EXHIBIT P2 TRUE COPY OF THE MEMORANDUM FOR REGISTRATION OF MARRIAGE SUBMITTED BEFORE THE TRITHALA GRAMA PANCHAYATH BY THE PETITIONER AND HER HUSBAND.
- EXHIBIT P3 TRUE COPY OF THE NOTICE OF INTENDED MARRIAGE GIVEN UNDER SECTION 5 OF THE SPECIAL MARRIAGE ACT, DATED 04.02.2021.