

Jebin Joseph vs State of Kerala

Jebin Joseph vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1306959

Court : Kerala

Decided On : Feb-08-2024

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : WP(C)/4636/2024

Appellant : Jebin Joseph

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN THURSDAY, THE 8TH DAY OF FEBRUARY 2024 / 19TH MAGHA, 1945 PETITIONER: JEBIN JOSEPH, AGED 27 YEARS, PLAPPARAMBIL HOUSE, MUNDAKAYAM P.O., MUNDAKAYAM, KOTTAYAM, KERALA, PIN-686 513. BY ADVS.PADMA LAKSHMI HASEENA T. RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTER, HIGH COURT OF KERALA, ERNAKULAM, PIN-682 031. 2 DISTRICT COLLECTOR, ERNAKULAM DISTRICT, COLLECTORATE, ERNAKULAM, FIRST FLOOR OF CIVIL STATION, ECHAMUKU,

KUNNAMPURAM, KAKKANAD, KERALA, PIN-682 030. 3 THE SECRETARY OF HUMAN RIGHT COMMISSION REPRESENTED BY KERALA HUMAN RIGHT COMMISSION, 4TH FLOOR, TURBO TOWER, PMG ROAD, THIRUVANANTHAPURAM, KERALA, PIN-695 033. 4 STATION HOUSE OFFICER, CHERANALLOOR POLICE STATION, CHERANALLOOR ROAD, CHERANALLUR, KOCHI, ERNAKULAM, KERALA-682 034. 5 MANAGING DIRECTOR, ASTER MEDCITY, KUTTISAHIB ROAD, CHERANELLOOR, SOUTH CHITTOOR, KOCHI, KERALA, PIN-682 027. SRI. SUNIL KUMAR KURIAKOSE, GOVERNMENT PLEADER SRI. PRASHANT PADMANABHAN THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

08.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -2- C.R.

JUDGMENT

Dated this the 8th day of February, 2024 Though the formal forensic scheme applicable to our Country stipulates little for protecting the rights of the dead, it is ingrained into the collective ethos; and which has found expression in declarations of Courts, the locus classicus being *Parmanand Katara v. Union of India & Ors.* [1989 (4) SCC 286].

2. This Court certainly has no doubt that the

constitutionally protected and guaranteed right of every individual to dignity and fair treatment, especially under Article 21 of the Constitution of India, cannot be construed to cease with death; but continues much beyond, at least until such time as mortal remains are finally dealt with, commanding respect as it requires.

3. As said above, through judicial interventions, these rights have obtained restatements over the time; and it has now become settled on account of declarations -3- through a catena of precedents, and hence virtually having the force of law.

4. Human dignity, no doubt, lies at the core of all

international human rights schemes and legislations. Starting from the Geneva Convention of 1949; traveling through the Cairo Declaration on Human Rights in Islam; followed by the United Nations Commission on Human Rights and the United Nations Inter-Agency Standing Committee's Operational Guidelines on Human Rights and Natural Disasters; concluding with the International Humanitarian Law, the right of an individual to a decent

and dignified burial remains inviolable and beyond debate.

5. The preface as afore has become necessary

because the petitioner impels a very grave situation, where he says that his Live-in Partner, late Manu, had an accidental death on the early morning of 03.02.2024; and that his mortal remains are now maintained by the 5 th respondent Hospital in their mortuary. He alleges that the Hospital is demanding an amount of Rs.1,30,000/-, as a

-4-

condition for release of the mortal remains of late Manu; that, even if he is to find the source for this, he has been told that it will not be released to him, since he cannot be recognised to have any right for such, under any of the legislative or customary laws. He further says that the parents of late Manu and his other family members, have long given upon on him, solely because of the choice of life that he accepted, particularly since he came out openly as being part of LGBTQIA+ community.

6. The petitioner asserts that, therefore, for all

intent and practical purposes, he becomes the only surviving person, with any interest over the mortal remains of late Manu; and hence that he is entitled to be given its custody, so that it can then be given the burial that he deserves.

7. Sri. Prashant Padmanabhan - learned counsel, appearing along with Smt. Padma Lakshmi for the petitioner, pointed out that the members of the LGBTQIA+ community are move emotionally sensitive than most of the others; and that the

death of their -5-

partner visits them with psychological consequences which is difficult of being semantically described. He asserted that his client is going through such an indescribable situation, being in deep distress and in a state of tenebrous despair and agony; and hence that the lack of respect shown to the mortal remains of late Manu, particularly in being refused a decent burial, feels cataclysmic to him, and in any event, is contrary to the public spirit of this nation. He submitted that the 5th respondent - Hospital also cannot retain the mortal remains of late Manu merely, because his client is unable to raise resources; but then added that, through crowd funding and sourcing from others like friends and relatives, he has been able to raise an amount of Rs.1,00,000/-, which would be perhaps sufficient to pay off the medical bills. He concluded, pointing out that, even though there is a second prayer in the writ petition - that the Police be directed to take necessary action against the family of late Manu under Section 279 of the Indian Penal Code - is not being pressed because, pending this lis, he

-6-

has been informed that the brother of late Manu has come to the Hospital, ready to receive his mortal remains, for being buried or cremated as per the customary requirements of his family. He thus reiteratingly prayed that, either this Court allow his client to take custody of the mortal remains of late Manu; or, in the alternative, that he be permitted to participate in the obsequies, if the burial/cremation is to be done by his family, which now appears to be the course suggested by the learned Government Pleader.

8. Sri. Sunil Kumar Kuriakose - learned

Government Pleader, submitted that the official Authorities, particularly the Police, has dealt with the issue with the empathy and the sensitiveness required, recognising that late Manu is stated to have been living with the petitioner in an apartment. He submitted that, however, the question whether they are Live-in Partners, within the ambit of such an expression qua the LGBTQIA+ community, has not been established; and that this might come out only through a proper

investigation -7- which the Police intends to conclude, the death being admittedly, in suspicious circumstances, though yet to be established to be on account of any human intervention.

9. Sri. Sunil Kumar Kuriakose, thereafter,

submitted that, guided by the observations made by this Court, when this matter was earlier considered, the Station House Officer of the Police Station concerned had contacted the family of late Manu and they had thus

agreed to come down to Kochi, to authorise the mandatory inquest, leading to the postmortem of his mortal remains. He submitted that, however, since the parents are infirm to travel, the elder brother of late Manu, along with other relatives, had arrived in the 5 th respondent - Hospital, consequent to which, the inquest was completed and the mortal remains shifted to the Ernakulam Medical College Hospital, Kalamassery, for Postmortem. He submitted that the said procedure is also now over; and that the Police are ready and willing to hand over the mortal remains to any person whom this Court direct.

-8-

10. Interestingly, Smt. Pooja Menon, appearing for

the 5th respondent - Hospital submitted that the total expenses suffered by her client, for the treatment of late Manu is Rs.1,36,000/-, out of which Rs.16,000/- has been offered as discount; while Rs.30,000/- has already been paid in advance. She submitted that, therefore, if either the family of late Manu, or the petitioner, is willing to honour this amount, they would accept it; however, explaining that this is not being put as a condition for release of his mortal remains. She added that the amounts as afore are actual expense bills, which construes medicines, essential life saving supplies, as also Doctors' charges; and hence that her client cannot forego it, as has been earlier recorded by this Court in one of the interim orders, which she conceded was on account of the fact that she was not able to explain these aspects cogently at that time.

11. Mercifully, this Court is not required to enter into the question of the money involved because, Sri. Prashant Padmanabhan - learned counsel for the -9- petitioner, submitted that his client is willing to pay Rs.1,00,000/-, he having been able to garner it through the means already said above.

12. Therefore, all which remains before this Court

now is whether the petitioner, as a matter of right, can either be allowed to take custody of the mortal remains of late Manu, or be ordered to be given an opportunity to take part in his final rites and obsequies.

13. As indited above, the specific contention of Sri. Prashant Padmanabhan is that the petitioner and late Manu were living together as partners and that both of them belong to LGBTQIA+ community. Though there is no confirmed evidence to establish these facts, the

circumstances involved and the scenario presented, indicate, at least prima facie, that there is some truth in what the petitioner asserts. This is because, even the learned Government Pleader - Sri. Sunil Kumar Kuriakose submitted that, at the time when the Police authorities contacted the parents of late Manu, they had expressed some reservations in taking over his mortal remains

-10- because they were perhaps apprehensive of the social stigma on account of his life choices, particularly to live with his partner namely, the petitioner.

14. There is also no warrant for this Court to

believe, or hold, at this time, that the petitioner is not telling the truth; and therefore, if it is taken to be so, ex-argumento, it would be justified this Court to accept his assertion that he was a Live-in partner of late Manu.

15. However, a larger aspect that emerges is

whether the petitioner would obtain the exclusive right over the mortal remains of late Manu; and whether his request, to participate in his last rites, deserve to be acceded to.

16. As an abstract principle, the posthumous rights

of an individual is not really something which is vital sacrosanct to him or her, but is meant to control the conduct of living persons. The right of a person to a decent and dignified burial has its postmonition in Article 21 of the Constitution of India; and this would become possible only if the living persons recognise it and act

-11- in conformity thereof. Similarly, the right of a person to a peaceful interment and the right to rest eternally - which have also been long and well accepted internationally, as also in our nation - has the inviolable edifice of the facet of of life to be recognised to its fullest warrant.

17. In that perspective, when I examine the

assertions of the petitioner in this case, it must surely be with respect to the wishes of late Manu especially if he wanted the comfort and consortium of his partner on his final journey, leading to eternal rest.

18. Fortunately, the petitioner may be saved of any

further pathos, since the learned Government Pleader informs this Court that the Police Authorities have talked to the family of late Manu; and that, though they are not in agreement of his mortal remains being handed over to the petitioner, they have no objection in him taking part in his last life and obsequies, which is to be held at their hometown at Payyavoor, Kannur. In fact, the learned Government Pleader added that, perhaps, they have expressed this, being fully aware of the relationship that

-12- the petitioner had with late Manu; and therefore, if this Court orders, necessary arrangements for his participation in the obsequies can be done by the Police Authorities, to the extent possible. In the afore background, it is clear that, to ensure

that late Manu obtains peace in heaven and that he is able to lie in rest eternally, I am certain that a conflict between the petitioner and his family is best to be avoided. Since this Court has no information of any such as of now, I am certain

that it will be justified to dispose of this writ petition, with the following directions:-

a) I give liberty to the petitioner to pay an amount of Rs.1,00,000/-, in full and final settlement of the medical bills of the 5th respondent - Hospital; and this shall be paid by him without any delay. b) The Ernakulam Medical College Hospital, Kalamassery, will release the mortal remains of late Manu, subject to all other requirements in law being satisfied, to the Police Authorities concerned; who will, in turn, give custody of it to his elder brother, which shall be done without any unnecessary delay. -13- c) Though this Court has not been able to interact with the family of late Manu, they being not in the party array, I propose to accept the submissions of the learned Government Pleader that, they have agreed the petitioner to be the part of his last rites. In such view, I direct the Station House Officer, Payyavoor, Kannur to ensure necessary arrangements for the petitioner to be able to take part in such, however, which shall be subject to the express consent to be given by the parents of late Manu. To paraphrase, if the parents do not disclose any objection in the petitioner participating in the last rites of late Manu, then it shall be ensured by the Police Authorities through appropriate means.

Sd/- DEVAN RAMACHANDRAN JUDGE bpr/anm -14- APPENDIX OF WP(C)
4636/2024 PETITIONER'S EXHIBITS

EXHIBIT 1 TRUE COPY OF THE JUDGMENT

EXHIBIT 2 TRUE COPY OF THE JUDGMENT

EXHIBIT 3 TRUE COPY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS
EXHIBIT 4 TRUE COPY OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

EXHIBIT 5 TRUE COPY OF THE JUDGMENT

EXHIBIT 6 TRUE COPY OF THE JUDGMENT

EXHIBIT 7 TRUE COPY OF THE STUDY REPORT PUBLISHED BY SAGE
PALLIATIVE MEDICINE

EXHIBIT 8 TRUE COPY OF THE JUDGMENT

EXHIBIT 9 TRUE COPY OF THE JUDGMENT

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com