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Jyothy Anthraper vs Tomy Joseph

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Court : Kerala

Decided On : Sep-13-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : OP(Crl.)/704/2023

Appellant : Jyothy Anthraper

Respondent : Tomy Joseph

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN WEDNESDAY, THE 13TH DAY OF SEPTEMBER 2023 / 22ND BHADRA, 1945 OP(CRL.) NO. 704 OF 2023 AGAINST THE ORDER/JUDGMENT IN MC 209/2020 OF FAMILY COURT,ERNAKULAM PETITIONERS/PETITIONERS/PETITIONERS:

1 JYOTHY ANTHRAPER, AGED 37 YEARS, W/O TOMY JOSEPH, D/O. KURIAN ANTHRAPER, ANTHRAPER HOUSE, HOUSE NO.XI/4/E, KARUMALLOOR PANCHAYATH, NEAR JYOTHI NIVAS SCHOOL, UC COLLEGE P.O., ALUVA, ERNAKULAM, PIN - 683102 2 ETHAN JOSEPH TOMY (MINOR), AGED 11 YEARS, S/O. TOMY JOSEPH,

ANTHRAPER HOUSE, HOUSE NO.XI/4/E, KARUMALLOOR PANCHAYATH, NEAR JYOTHI NIVAS SCHOOL,UC COLLEGE P.O., ALUVA, ERNAKULAM, PIN - 683102 3 JOANNA MARIA TOMY (MINOR), AGED 6 YEARS, S/O. TOMY JOSEPH, ANTHRAPER HOUSE, HOUSE NO.XI/4/E, KARUMALLOOR PANCHAYATH, NEAR JYOTHI NIVAS SCHOOL,UC COLLEGE P.O., ALUVA, ERNAKULAM, PIN - 683102 BY ADVS. S.GOPAKUMAR T.M.BINITHA

RESPONDENT/RESPONDENT/RESPONDENT: TOMY JOSEPH, AGED 43 YEARS, S/O. LATE JOSEPH JOHN, SRAMPICAL HOUSE, KUVEMPU ROAD, SHIMOGA, KARNATAKA, PIN - 577201 THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON 13.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: P.V.KUNHIKRISHNAN ---------- ---------- Dated this the 13th day of September, 2023

JUDGMENT

The petitioners are the petitioners in M.C.No.209/2020

on the files of the Family Court, Ernakulam. The proceedings were initiated by the 1st petitioner, claiming maintenance for herself and on behalf of petitioner Nos.2 and 3, the minor children. The respondent, who is a Canadian citizen has sufficient means and is legally bound to maintain the petitioners, has neglected and refused to maintain the petitioners is the grievance of the petitioners. Ext.P1 is the petition filed before the Family Court, Ernakulam. Ext.P2 is the objection filed by the respondent

in Ext.P1 petition. After receipt of the notice, O.P No.2711/2019 filed by the 1st petitioner herein seeking permanent custody of the petitioner Nos.2 and 3, a divorce petition was filed before the Family Court, Bangalore. On receipt of the notice in the said matter, the 1 st petitioner approached the Apex court seeking transfer of the said divorce case to Family Court, Ernakulam and the Apex court transferred the divorce case to the Family Court, Ernakulam

to be tried along with O.P.No.2711/2019 and M.C.No.209/2020 with a direction to dispose of the matters together. Ext.P3 is the order of the Apex court. In the maintenance petition, the court below ordered interim maintenance at the rate of Rs.10,000/- each for petitioners and petitioners approached this Court seeking enhancement in the interim maintenance. But, this court disposed the same as per Ext.P4 confirming the interim maintenance and directed to dispose the matter within four months. Ext.P4 is the judgment.

2. The matter was proceeded by the court below and on 17/08/2023, the case was posted for steps to

for time bound disposal of the case. On 22/08/2023, the petitioners filed Crl.M.P.No.559/2023 under Section 91 of the Cr.P.C seeking direction to the respondent to produce some documents exclusively in the custody and possession of the respondent. According to the petitioners, this was necessitated in view of the fact that in the means affidavit, the respondent suppressed many materials. Ext.P5 is the petition and Ext.P6 is the means affidavit filed by the respondent dated 19.04.2023. On 22/08/2023, without considering and passing orders in Ext.P5, the court below adjourned the matter to 04/09/2023 noting as for trial in the list. The respondent filed Ext.P7 objection to Ext.P5 petition. Thereafter, Ext.P5 application is dismissed by the lower court as evident by Ext.P8. Aggrieved by Ext.P8 order, this OP(Crl.) is filed.

3. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

4. This Court perused Ext.P8 order passed by the

Family Court, Ernakulam. A perusal of the same would show that petitioners have sought production of 13 documents in Ext.P5 petition. It is submitted by the learned Judge that the petitioners have stated the numbers of document also. Therefore, the learned Judge observed that there is no difficulty for the petitioners to obtain those copies and produce it for reference if the same has any relevance in the adjudication of the case. The other documents sought by the petitioners are the bank statements, income assessment notice and salary slips to be obtained from various authorities in Canada. The learned Judge observed that the

petitioners could not point out the relevance of those documents in the adjudication of the present case. In such circumstances, Ext.P8 order is passed. I see no reason to interfere with Ext.P8 order.

5. Admittedly, the petitioners are having the number of the registered documents mentioned in Ext.P5 petition. The petitioners can put questions to the respondent at the

time of cross examination regarding the documents mentioned in Ext.P5. Suppose, the same is admitted by the respondent, the question of allowing Ext.P5 petition would not arise. Therefore, I am of the opinion that, after the examination of the respondent before the lower court and if there is any need of the documents mentioned in Ext.P5, the petitioners are free to file a fresh petition before the Family Court. If such a petition is filed at that stage, the court below will consider the same untrammelled by any observation in Ext.P8. But, I make it clear that the Family court is free to pass appropriate orders, in accordance with law, in the facts and circumstances of the case.

With the above observations, this original petition (criminal) is disposed of. Sd/- P.V.KUNHIKRISHNAN JUDGE bng APPENDIX OF OP(CRL.) 704/2023 PETITIONERS EXHIBITS Exhibit P1 TRUE COPY OF THE PETITION IN M.C.NO. COURT, ERNAKULAM FILED BY THE PETITIONERS DATED 24/08/2020 Exhibit P2 TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT DT. 16/12/2022 Exhibit P3 TRUE COPY OF THE ORDER DT. 09/09/2021 IN TR.P.(C) NO. 874/2020 OF THE HON'BLE SUPREME COURT Exhibit P4 TRUE COPY OF THE JUDGMENT IN O.P.(CRL.) NO. 532/2022 DT. 10/07/2023 Exhibit 5 TRUE COPY OF THE CRL.M.P.NO. 559/2023 FILED BY THE PETITIONER UNDER SECTION 91 OF THE CR.P.C DT. 22/08/2023 Exhibit 6 TRUE COPY OF THE MEANS AFFIDAVIT FILED BY THE RESPONDENT DT. 19/04/2023 Exhibit 7 TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN CRL.M.P.NO. 559/2023 DT. Exhibit 8 TRUE COPY OF THE ORDER PASSED BY THE FAMILY COURT, ERNAKULAM IN CRL.M.P.NO. Exhibit 9 TRUE COPY OF THE I.A.NO. 8440/2022 FILED BY THE RESPONDENT DT. 25/11/2022 SEEKING JOINT TRIAL OF CASES Exhibit P10

TRUE COPY OF THE CASE STATUS OBTAINED FROM THE OFFICIAL WEBSITE OF THE E- COURTS

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