

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 17TH DAY OF AUGUST 2022 / 26TH SRAVANA, 1944

OP (FC) NO. 394 OF 2022

AGAINST THE ORDER/JUDGMENT IN OP(OTHERS) 52/2022 OF FAMILY

COURT, CHAVARA

PETITIONER:

ANVARUDEEN, AGED 30 YEARS, SON OF MUHAMMED HUSSAIN,
RESIDING AT NELLIKATTIL VEETIL, KUMIL P O,
KOTTARAKKARA TALUK, KOLLAM,, PIN - 691 536

BY ADVS.
MAJIDA.S
AJIKHAN.M

RESPONDENT:

SABINA, AGED 24 YEARS, DAUGHTER OF ABDUL SAMAD,
RESIDING AT EDAYILAVEETIL PUTHEN VEEDU,
KADAPPA, MYNAGAPPALLY VILLAGE, KOLLAM,, PIN - 691
008

BY ADVS.
Suresh Kumar M.T.
SHRI.R.RANJITH,SC,KOOVAPPADY GRAMA PANCH(SC-1498)
SMITHA PHILIPOSE(K/592/2005)
MANJUSHA K(K/000191/2018)
SREELAKSHMI SABU(K/000200/2020)

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
17.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) NOS. 394 & 395 OF 2022

..2..

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

WEDNESDAY, THE 17TH DAY OF AUGUST 2022 / 26TH SRAVANA, 1944

OP (FC) NO. 395 OF 2022

AGAINST THE ORDER/JUDGMENT IN OP(OTHERS) 165/2022 OF FAMILY
COURT, CHAVARA

OP(OTHERS) 165/2022 OF FAMILY COURT, CHAVARA

PETITIONER:

ANVARUDEEN, AGED 30 YEARS, SON OF MUHAMMED HUSSAIN,
RESIDING AT NELLIKKATTIL VEETIL, KUMIL P O,
KOTTARAKKARA TALUK, KOLLAM,, PIN - 691 536

BY ADVS.
MAJIDA.S
AJIKHAN.M

RESPONDENT:

SABINA, AGED 24 YEARS, DAUGHTER OF ABDUL SAMAD,
RESIDING AT EDAYILAVEETIL PUTHEN VEEDU,
KADAPPA, MYNAGAPPALLY VILLAGE, KOLLAM,, PIN - 691
008

BY ADVS.
Suresh Kumar M.T., SMITHA PHILIPOSE (K/592/2005)
MANJUSHA K(K/000191/2018)
SREELAKSHMI SABU (K/000200/2020)
R.RENJITH (K/735/1999)

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
17.08.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC) NOS. 394 & 395 OF 2022

..3..

J U D G M E N T

A. Muhamed Mustaque, J

These original petitions are filed at the instance of the husband. He is a muslim by faith. He married the respondent in accordance with the muslim religious rites and ceremonies. The case depicts a strained marital relationship. The petitioner appears to have initiated steps to pronounce Talaq. He has pronounced first and second Talaq. Before pronouncing irrevocable Talaq, he has been restrained by an order of temporary injunction by the Family Court. This order has been passed at the instance of the wife. The wife also had filed an application restraining him to conduct second marriage. That also has been allowed. These independent orders are challenged in these original petitions.

2. The Court have no role in restraining the parties invoking their personal law remedies. The Court should not forget the mandate of Article 25 of the Constitution of India, which not only allows one profess

OP (FC) NOS. 394 & 395 OF 2022

..4..

religion but also to practice. In essence, if any orders are passed restraining one from acting in accordance with the personal belief and practice, that would amount to encroaching his constitutionally protected rights. No doubt, aggrieved can challenge any action emanates out of exercise of faith and practice; if it was not done in accordance with the personal law, belief and practice but that stage would arise only after the performance of the act. The jurisdiction of the Court is limited in these kinds of processes. The Family Court cannot restrain a person performing his act in accordance with the personal law. The act complained, invoking irrevocable invocation of Talaq yet to come into existence. It is only after the completion of the process and the procedure act qua the Talaq, it can be said that whether it was in accordance with the procedure as prescribed under the personal law or not. It is unfortunate before that exercise is being done he has been restrained from acting in accordance with the personal belief and practice. The right to marry more than one person at a time is prescribed under the personal law. If the law ensures such protection, it is not for

OP (FC) NOS. 394 & 395 OF 2022

..5..

the Court to decide that one person should not act in accordance with the personal conscious and belief in accordance with his religious practices. The Court has no role to restrain or regulate one's behavior or decision in accordance with the personal law guaranteed. In the light of exercise of the husband in accordance with the personal law as above, we are of the view, the orders impugned are without any justification and jurisdiction. We set aside both the orders. We make it clear that at appropriate time, if Talaq is not exercised in accordance with the law, the respondent-wife can approach the competent Court to redress her grievances.

These original petitions are allowed. Both orders are set aside. No costs.

Sd/-

A.MUHAMED MUSTAQUE
JUDGE

Sd/-

SOPHY THOMAS
JUDGE

PR

OP (FC) NOS. 394 & 395 OF 2022

..6..

APPENDIX OF OP (FC) 394/2022

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE ORDER IN I.A.
 NO.2/2022 IN O.P. (OTHERS) NO.52/2022
 DATED 31.5.2022 OF THE FAMILY COURT,
 CHAVARA

OP (FC) NOS. 394 & 395 OF 2022

..7..

APPENDIX OF OP (FC) 395/2022

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE ORDER DATED 28.5.2022
IN I.A. NO.2/2022 IN O.P. (OTHERS)
NO.165/2022 OF THE FAMILY COURT,
CHAVARA