



2024:KER:80260

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 28TH DAY OF OCTOBER 2024 / 6TH KARTHIKA, 1946

TR.P(CRL.) NO. 43 OF 2024

AGAINST THE ORDER IN CMP NO.546/2021 IN MC NO.106 OF 2019 OF
FAMILY COURT, THALASSERY IN MC NO.236/2021 OF FAMILY COURT,
THALASSERY

PETITIONER/PETITIONER/RESPONDENT/RESPONDENT:

NOUSHAD FLOURISH
AGED 46 YEARS, S/O MOHIYUDDIN FLOURISH
HOUSE NEAR MEPPAYUR HIGHER SECONDARY SCHOOL
MEPPAYUR POST,
KOZHIKODE DIST., PIN - 673524

BY ADVS.
SMT.SURUMI SHAKEEL
SRI.SHAIJAN JOSEPH

RESPONDENTS/RESPONDENTS/PETITIONERS/PETITIONERS:

1 AKHILA
AGED 37 YEARS, D/O RAZIK E.V
KALIMA HOUSE
PERINGADI POST, NEW MAHE
KANNUR DIST., PIN - 673312

2 LAMAR MOIDEEN
AGED 13 YEARS, S/O NOUSHAD FLOURISH
KALIMA HOUSE, PERINGADI POST,
NEWMAHE, KANNUR DIST., PIN - 673312

BY ADVS.
SRI.ASAF ALI T.
SMT.LALIZA.T.Y.



SRI. C.N. PRABHAKARAN, PUBLIC PROSECUTOR

**THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 14.10.2024, THE COURT ON 28.10.2024 PASSED THE
FOLLOWING:**

**BECHU KURIAN THOMAS, J.****Tr.P.(Crl.) No.43 of 2024**

Dated this the 28th day of October, 2024

ORDER

Petitioner seeks transfer of M.C. No.236/2021, seven miscellaneous petitions in M.C. No.106/2019 and M.C. No.302/2023, all pending on the files of the Family Court, Thalassery to Family Court, Vadakara.

2. Petitioner and the first respondent are husband and wife. Matrimonial disputes have arisen between them, which is now pending before the Family Court, Thalassery. Petitioner seeks transfer of the cases pending in the said court alleging bias of the Presiding Officer. M.C. No.236/2021 is filed for modifying an order of maintenance already directed to be paid. The seven petitions in M.C. No.106/2019 are those filed by the respondents for the realization of the maintenance amount already ordered.

3. Petitioner apprehends that the Presiding Officer of the Family Court is biased against him and various circumstances are pointed out as the basis for such an apprehension. According to the petitioner, whenever petitions are filed by the respondents they are accepted without even serving a copy on him, documents produced by the petitioner are treated as forged, submissions on behalf of the respondents are accepted without any verification, the orders are passed in favour of the first respondent repeatedly, petitioner will be declared ex parte if he is absent on a single posting date without adopting such



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measures when the first respondent is absent, giving a posting date in open court, and a different date when the proceedings are uploaded and attempts to dispose of cases when criminal appeal is pending in the High Court. Petitioner alleges that the above are all instances indicating that the Presiding Officer is biased against the petitioner. Petitioner alleges that his counsel had also filed a complaint dated 23-02-2024 before the Registrar General of the High Court pointing out the bias of the Presiding Officer. On the basis of the above circumstances, petitioner wants the cases and the petitions pending to be transferred to another Family Court.

4. I have heard Adv. Surumi Shakeel, the learned counsel for the petitioner and Adv. Laliza T.Y., the learned counsel for the respondents.

5. During the hearing, it was revealed that this is the third transfer petition filed by the petitioner alleging bias of the Presiding Officer. Curiously, the earlier two transfer petitions alleged bias against the earlier Presiding Officer, while the present transfer petition alleges bias against the new Presiding Officer of the same court. The two transfer petitions filed earlier as Tr.P(C) No. 835/2022 and Tr.P(Crl.) No. 37/2023 sought transfer of cases from the Family Court, Thalassery. The contentions raised in the two earlier transfer petitions were almost similar to those raised in this third transfer petition. Though the nomenclature of the transfer petitions indicates that amongst the two earlier transfer petitions, one was a civil transfer petition and the other a criminal transfer petition, the fact remains that this is the third petition for transfer.

6. Annexure A9 is the petition filed earlier by the petitioner before this



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Court as Tr.P.(Crl.) No.37/2023. It sought transfer of M.C. No. 236/2021 and six miscellaneous petitions filed in M.C. No.106/2019 from Family Court, Thalassery to Family Court, Vadakara. Annexure A9(a) is the order of this Court dated 07.08.2023 dismissing the said transfer petition. It is evident that the transfer petition was dismissed since the then Presiding Officer against whom bias was alleged had been shifted in the meantime.

7. The allegations raised by the petitioner in all the three transfer petitions are practically identical. Despite the change of the Presiding Officer, petitioner has made the same set of allegations, even against the new Presiding Officer. In fact, out of fifteen grounds raised in the present transfer petition, five of them are verbatim reproduction of the grounds raised in Tr.P. (Crl.) No.37/2023. Those five grounds relate to allegations of bias and prejudice of the Judge. Of the remaining grounds, except three, the rest are only statements on general principles of judicial conduct.

8. Apart from the above, it is evident from a reading of Annexure A9(a) order, dismissing Tr.P.(Crl.) No.37/2023, that petitioner had earlier also filed a petition as Tr.P.(C) No.835/2022 seeking transfer of two original petitions namely, O.P. No.367/2019 and O.P. No.389/2019 from Family Court, Thalassery to Family Court, Vadakara on the very same allegation of bias and prejudice of the Presiding Officer then in office. O.P. No.367/2019 was filed by the first respondent herein for return of gold and O.P. No.389/2019 was filed by her for getting custody of the minor child. Tr.P.(C) No.835/2022 was dismissed after observing that the Presiding Officer had already retired and a new Judge had joined. Transfer Appeal No.9/2023 filed by the petitioner



against the said order was also dismissed by the Division Bench confirming the order of the learned Single Judge in Tr.P.(C) No.835/2022. It is thereafter that the second transfer petition was filed as Tr.P.(Crl.) No.37/2023 for transferring other cases.

9. Thus, on two earlier occasions, the petitioner raised the very same allegations against the then Presiding Officer. The said Officer had retired in the meantime. The present transfer petition is against the new Presiding Officer, who is dealing with petitioner's cases. The basic allegations against two Presiding Officers in the three transfer petitions remain the same.

10. Apart from the above, the pleadings in the present transfer petition indicate that except for a few vague allegations of bias, no specific case is made out for a transfer of the case. A mere allegation of bias by itself can weaken the very edifice of the judicial system and even erode the confidence of the Officer. An allegation of bias against a Judicial Officer is a matter of serious concern. Reckoning the nature of duties bestowed upon a judicial officer and allegations of bias cannot be permitted to be raised without any basis and on mere surmises and assumptions. A judicial officer cannot be browbeaten to suit the convenience of a party to a lis. Unless the allegations of bias against a judicial officer are sturdy and impregnable, courts cannot rely on mere apprehensions to transfer cases from one court to another. In fact, merit less allegations of bias against a judicial officer ought to be sternly and ruthlessly dealt with.

11. A judicial officer is expected to dispense justice to the best of his ability. While dealing with a case, a judicial officer will have to issue several



orders. The orders are issued as the circumstances warrant. In that process, orders adverse to a party will have to be issued. Adverse orders by themselves cannot be reasons to doubt the integrity of the judicial officer. The aggrieved certainly have remedies before the higher forum.

12. Of course, each case will have to be dealt with on the basis of facts arising therein. In the decision in **Abraham Thomas Puthooran v. Manju Abraham and Another** (2022 (1) KLT 317), a Division Bench of this Court observed that when the transfer of a case is sought on the allegation of bias of the Presiding Officer of a Court or on the ground of fear of not getting justice, it becomes the bounden duty of the Court to ascertain as to whether the ground of transfer has been substantiated by the litigant or not, since transfer of a case on such grounds casts aspersions upon the integrity and competence of the Presiding Officer. It was further observed that a petition seeking transfer of the case shall not be based on conjectures and mystic maybes and the onus is on the person who alleges bias to substantiate that his apprehensions are reasonable, genuine and justifiable.

13. In **Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Others** [(2001) 1 SCC 182], the Supreme Court held that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record to come to the conclusion as to the existence of any element of bias which has resulted in the miscarriage of justice. Similarly, in **State of Punjab v. Davinder Pal Singh Bhullar and Others** [(2011) 14 SCC 770], the Supreme Court had observed that there may be cases where allegations may be made against a Judge of having



bias/prejudice at any stage of the proceedings or after the proceedings are over. There may be some substance in it or it may be made for ulterior purposes or in a pending case to avoid the Bench if a party apprehends that judgment may be delivered against him. Suspicion or bias disables an official from acting as an adjudicator. Further, if such an allegation is made without any substance, it would be disastrous to the system as a whole, for the reason, that it casts doubt upon a Judge who has no personal interest in the outcome of the controversy.

14. In the instant case, only bald allegations have been raised against the Presiding Officer of the Family Court. No material of substance have been produced or could be pointed out by the petitioner to justify the prayer for a transfer. A complaint filed by the Advocate representing the party before the Registrar General of this Court cannot also be the sole basis for transfer of the case. If reliance is placed on such a complaint alone, every case can be transferred at the instance of an Advocate who feels that the court is not accepting his propositions. Thus, in the absence of anything substantial, as indicative of bias on the part of the judicial officer, petitioner's claim for transfer is baseless.

15. The similarity of allegations raised against two different Presiding Officers who dealt with petitioner's cases is a clear indication of petitioner's calumny. The various allegations raised by the petitioner against the Presiding Officer are without any merit. Such vituperative denigration of a judicial officer by a litigant has to be dealt with sternly and cannot be tolerated under any circumstances whatsoever.



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16. Notwithstanding the above, this Court notices that the Advocate appearing for the petitioner had filed Annexure A10 complaint before the Registrar General of the High Court, that too, in the form of an affidavit. The copy produced does not even bear the affirmation required for an affidavit. The remarks given by the learned Presiding Officer, which is placed on the records of this case, unequivocally mention that he has no personal contact with the parties and that all orders are issued legally. The details narrated also indicate that the petitioner is raising unfounded and baseless allegations against every Judicial Officer who handles his cases. Such a conduct is only to be deprecated.

17. The seven petitions filed by the first respondent, which are also the subject matter of this transfer petition, seek the realization of around Rupees Nine lakhs allegedly due from the petitioner towards arrears of maintenance. While doubting the bonafides of this petition, this Court also firmly believes that the transfer petition is a ploy to delay the proceedings and to browbeat the Presiding Officer from issuing orders in the various petitions pending consideration. Such conduct has to be dealt with, with iron hands and must be visited with costs.

In view of the above circumstances, this Court finds no merit in this petition for transfer and it is dismissed with a cost of Rs.15,000/- (Rupees Fifteen Thousand only) which shall be paid to the District Legal Services Authority, Thalassery within four weeks from today.

Sd/-

BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF TR.P(CRL.) 43/2024

PETITIONER'S/S' ANNEXURES

- Annexure A1 TRUE COPY OF MC 236/2021 FILED BY THE PETITIONER BEFORE THE FAMILY COURT, THALASSERI
- Annexure A2 TRUE COPY OF CMP 546/2021 IN M.C NO.106/2019 FILED BY THE RESPONDENTS BEFORE THE FAMILY COURT, THALASSERI
- Annexure A3 TRUE COPY OF CMP 705/2020 IN M.C NO.106/2019 FILED BY THE RESPONDENTS BEFORE THE FAMILY COURT, THALASSERI
- Annexure A4 TRUE COPY OF CMP 106/2020 IN M.C NO.106/2019 FILED BY THE RESPONDENTS BEFORE THE FAMILY COURT, THALASSERI
- Annexure A5 TRUE COPY OF CMP 408/2020 IN M.C NO.106/2019 FILED BY THE RESPONDENTS BEFORE THE FAMILY COURT, THALASSERI
- Annexure A6 TRUE COPY OF CMP 75/2022 IN M.C NO.106/2019 FILED BY THE RESPONDENTS BEFORE THE FAMILY COURT, THALASSERI
- Annexure A7 TRUE COPY OF CMP 367/2022 IN M.C NO.106/2019 FILED BY THE RESPONDENTS BEFORE THE FAMILY COURT, THALASSERI
- Annexure A8 TRUE COPY OF CMP 364/2023 IN M.C NO.106/2019 FILED BY THE RESPONDENTS BEFORE THE FAMILY COURT, THALASSERI
- Annexure A9 TRUE COPY OF TR.P (CRL) 37/2023 FILED BY THE PETITIONER BEFORE THIS HON'BLE COURT
- Annexure A9(a) TRUE COPY OF ORDER DATED 7.8.2023 IN TR.P (CRL) 37/2023 OF THIS HON'BLE COURT
- Annexure A10 TRUE COPY OF THE COMPLAINT NO. 21879/2024 FILED BY THE PETITIONER'S COUNSEL DATED 23.2.2024
- Annexure A11 TRUE COPY OF THE JOINT TRIAL PETITION IN MC 302/2023 AND MC 236/2021 DATED 26.2.2024 FILED BY THE COUNSEL FOR THE RESPONDENTS BEFORE THE FAMILY COURT, THALASSERI



RESPONDENT'S/S' ANNEXURES

Annexure R1-A TRUE COPY OF THE PETITION TR.P(C) 290/2024
WITHOUT ANNEXURES DT. 17/04/2024.

Annexure R1-B TRUE COPY OF THE PETITION TR.P(C) 835/2022
WITHOUT ANNEXURES DT. 20/12/2022.

Annexure R1-C TRUE COPY OF THE PETITION TR.P(CRL) 37/2023
WITHOUT ANNEXURES DT. 27/02/2023.