



2024:KER:83676

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 8TH DAY OF NOVEMBER 2024 / 17TH KARTHIKA, 1946

OP (FC) NO. 671 OF 2024

AGAINST THE ORDER DATED 09.10.2024 IN I.A.NO.7/2024 IN OPGW

NO.64 OF 2024 OF FAMILY COURT, MAVELIKKARA

PETITIONER/RESPONDENT:

XXXXX

XXXXX

BY ADVS.

M.G.SREEJITH

VIDYAJITH M.

BINCY JOSE

ROJIN DEVASSY

RESPONDENT/PETITIONER:

XXXX

XXXXX

BY ADVS.

KALAM PASHA B.

VISHAKHA J. - K/000850/2024

HASNA ASHRAF T.A - K/1156/2021

JUVYRIA A.A. - K/002434/2024

SRI P M SHAMEER-GP

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON
08.11.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

Devan Ramachandran, J.

This petitioner challenges Exts.P8, P13 & P14 orders of the learned Family Court, Mavelikkara.

2. The petitioner is the former wife of the respondent herein and they have a child aged 1½ years in their union. The controversy between the parties is with respect to the custody of the said child; and it transpires that the respondent-husband filed I.A.No.2 of 2024 and I.A.No.3 of 2024 in O.P(G&W) No.64 of 2024 - filed by him earlier before the learned Family Court, seeking permanent custody of the child – seeking her interim custody and also to modify Ext.P3 order passed by the learned Court on 22.05.2024, whereby, he was given overnight interim custody of the child on certain days.

3. The learned Family Court, Mavelikkara, allowed the aforementioned applications through Ext.P8 order, *prima facie* finding that the mother is suffering from psychiatric disorders; against which, she filed I.A.No.7 of 2024 seeking a review, which



has been dismissed through Ext.P13, and consequently, the learned Court passed Ext.P14 order, directing a Woman Police Officer to take custody of the child and to hand him over to the father.

4. The petitioner – mother assails all the afore orders on the ground that the assumption of the learned Family Court that, she is suffering from psychiatric disorders, is unfortunate and without any factual basis; and thus prays that all of them be set aside, particularly because, the child is unwilling to go to his father, being very young. She also has a case that the child is still nursing, requiring to be breastfed; and hence that to remove him from his mother would cause her severe trauma and stress.

5. However, the case of the respondent is to the contrary. He asserts that the petitioner – mother is suffering from deep Postpartum Disorder and shows no affinity to the child. He relies on certain documents which he had produced before the learned Family Court in substantiation, particularly Ext.P9 Medical Report.

6. We have heard Sri.M.G.Sreejith – learned counsel for



the petitioner and Sri.Kalam Pasha B. - learned counsel for the respondent.

7. As we have already said above, the bone of contention of the parties – in a manner of speaking - is the Medical Records of the petitioner-wife, which have been produced as Exts.P6 and P7. When one examines the said records – even assuming that legal validity can be attached to it – it is luculent that they are of February 2023, immediately after the petitioner gave birth to the child; and it only indicates that she was suffering from postpartum depression, thus showing some alienation to the baby at that time.

8. However, it must be borne in mind that, it is now well settled through scientific studies and assessments, that postpartum depression is rather common in some women and that this is not a situation that will continue forever, but most of the time being temporary, for a short duration. To allege that the petitioner-wife is still suffering from postpartum depression and is even unwilling to nurse the child, certainly requires to be established through



cogent and reliable methods; but, in our firm view, could not have been so declared by the learned Family Court, as has been done in Ext.P8 order, merely based on the afore records.

9. That said, it is interesting that, when the parties appeared before us on 04.11.2024, along with the child, the petitioner-mother offered and insisted that she be ordered to be evaluated medically by this Court, so that she will be able to substantiate that she is not suffering from any psychiatric or cognitive impairments as of now. We, therefore, indited an order, with the consent of both sides, on the afore date, which is as under:

Sri.M.G.Sreejith – learned counsel appearing for the petitioner, asserted that his client is without any cognitive or psychological impairment and that she is willing to have herself assessed by a competitive Medical Board for this purpose. He added that this offer is not being made because she concedes to any contention of the respondent, but only because she wants to find a quietus to the allegation that she is not well. He thus requested this Court that a Medical Board attached to the Medical College, Ernakulam, be ordered to convene immediately, since she is now working in Chennai and can remain here only for the next one or two days.

2. Sri.P.M.Shameer – learned Government Pleader, submitted that he has contacted the Medical Superintendent of the Government Medical College, who has told him that



the parties can appear in his office at 11 AM tomorrow, and that the Board will evaluate the petitioner.

3. In the afore circumstances, we direct the petitioner to mark appearance at the office of the Superintendent, Medical College, Ernakulam at 10.30 AM tomorrow.

We request the Superintendent to make available a report of the evaluation of the petitioner through the learned Government Pleader, by the next posting date.

Show the name of the learned Government Pleader in the cause list.

List for further consideration on 08.11.2024.

10. The Department of Psychiatry, Government Medical College, Ernakulam, has now made available a report of evaluation of the petitioner and the relevant portion of the same is extracted below:

As per the above references [REDACTED] and [REDACTED] appeared before the Medical Board on 05.11.2024.

History was obtained from both parties. There were no other reliable informants to clarify the history.

Mental Status Evaluation of [REDACTED] on 05.11.2024.

She is conscious and in touch with surroundings. Psychomotor activity is normal. Talk is relevant and coherent. No formal thought disorder, abnormality of stream of thought or delusions elicited. She expresses concerns regarding the current life situations. Mood is Euthymic and affect appropriate. No perceptual abnormalities elicited. Higher mental functions are grossly intact.

Impression

No evidence of any major psychiatric disorder obtained during evaluation.

For a final opinion board suggests:



- 1) Clarification of history from reliable sources other than clients.
- 2) Detailed psychological assessment by psychometry and personality inventory.
- 3) Serial MSE and observation preferably as in patient.

11. It is thus obvious that the presumption of the learned Family Court regarding the alleged psychiatric issues of the petitioner cannot be found favour with, at least as of now, without further evidence and assessment.

12. In such perspective, we asked Sri.Kalam Pasha – learned counsel for the respondent-father, whether his client is still insisting that the child be handed over to him at this stage, to which, his reply was that he is also fully conscious that a child of this age would require its mother in normal circumstances; but that what he presents in this case is a peculiar scenario where the mother is unable to take care of the child and therefore, that his client apprehends that the latter's life itself will be in danger.

13. We must say that we cannot find the afore apprehension to be fully tenable, at least from a *prima facie* point of view; though, it will be open to the parties to lead evidence in



corroboration of their respective plea at the relevant time.

14. As matters now stand, the report from the Department of Psychiatry, Government Medical College, Ernakulam – at least to substantial extent – will assuage the fear expressed by the respondent; and we are of the preliminary view that there is no reason why we should discard it, though we do not think that the litigation before the learned Family Court should be governed by it exclusively.

15. To paraphrase, the evaluation of the petitioner by the Government Medical College is only for our assessment and we leave the parties to invoke every other liberty that may be available to them, when the matter is finally disposed of by the learned Family Court.

16. In summation, we cannot find favour with Ext.P8 and consequently, Exts.P13 and P14 orders would also fail.

Resultantly, we allow this Original Petition and set aside Ext.P8, as also Exts.P13 and P14; with a consequential direction to



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the learned Family Court to dispose of O.P.(G&W)64/2024, after affording necessary opportunity to both sides, untrammelled by our observations herein, as expeditiously as is possible.

Needless to say, if there should be a change of circumstances in future, or if the respondent is to believe that further orders are required, he is at full liberty to move the learned Family Court appropriately; in which event, it will be decided in terms of our directions above.

Since we are sure that the privacy of the parties in this case is required to be protected, we direct the Registry to mask their identities in all papers. Necessary steps to ensure this shall be taken forthwith.

Sd/-

DEVAN RAMACHANDRAN

JUDGE

Sd/-

M.B. SNEHALATHA

JUDGE

SP/RR



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APPENDIX OF OP (FC) 671/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORIGINAL PETITION IN OP(G&W) NO. 64/2024 IN THE FILES OF FAMILY COURT, MAVELIKARA
- Exhibit -P2 TRUE COPY OF IA NO.2/2024 IN OP(G&W) NO. 64/2024 IN THE FILES OF FAMILY COURT, MAVELIKARA
- Exhibit -P3 TRUE COPY OF ORDER DATED 22-05-2024 IN IA NO.2/2024 IN OP(G&W) NO. 64/2024 IN THE FILES OF FAMILY COURT, MAVELIKARA
- Exhibit -P4 TRUE COPY IA NO.3/2024 IN OP(G&W) NO. 64/2024 IN THE FILES OF FAMILY COURT, MAVELIKARA
- Exhibit-P5 TRUE COPY OF OBJECTION FILED BY THE PETITIONER IN IA NO.3/2024 IN OP(G&W) NO. 64/2024 IN THE FILES OF FAMILY COURT, MAVELIKARA
- Exhibit -P6 TRUE COPY OF DISCHARGE SUMMARY DATED 10-02-2023 ISSUED FROM GENERAL HOSPITAL, ERNAKULAM
- Exhibit -P7 TRUE COPY OF PSYCHOLOGICAL REPORT DATED 17-03-2023 BEARING OP NO.5266
- Exhibit -P8 TRUE COPY OF COMMON ORDER DATED 12-09-2024 IN IA NO.2/2024 & IA NO.3/2024 IN OP(G&W) NO.64/2024 IN THE FILES FAMILY COURT, MAVELIKARA
- Exhibit -P9 TRUE COPY OF JUDGEMENT DATED 25-10-2024 IN OP(FC) NO.648/2024
- Exhibit -P10 TRUE COPY OF THE AGREEMENT FOR DIVORCE EXECUTED BETWEEN THE PETITIONER AND RESPONDENT DATED 27-04-2024



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- Exhibit -P11 TRUE COPY OF REVIEW PETITION FILED AS IA NO.7/2024 IN OP(G&W) NO.64/2024 IN THE FILES OF FAMILY COURT, MAVELIKARA
- Exhibit -P12 TRUE COPY OF IA NO.8/2024 IN OP(G&W) NO.64/2024 IN THE FILES OF FAMILY COURT, MAVELIKARA
- Exhibit -P13 TRUE COPY OF ORDER IN IA NO.7/2024 IN OP(G&W) NO.64/2024 IN THE FILES OF FAMILY COURT, MAVELIKARA DATED 09-10-2024
- Exhibit -P14 TRUE COPY OF ORDER IN IA NO.8/2024 IN OP(G&W) NO.64/2024 IN THE FILES OF FAMILY COURT, MAVELIKARA DATED 09-10-2024
- Exhibit -P15 TRUE COPY OF PLAINT IN OS NO.351/2023 IN THE FILES OF MUNSIFF'S COURT, ERNAKULAM

RESPONDENT EXHIBITS

- Exhibit R1(b) The true copy of Psychological Report issued by the Clinical Psychologist of Mibo Health and Happiness Care Pvt.Ltd., Edappally dated 17.03.2023
- Exhibit R1(a) The true copy of the birth certificate of the child issued by the Registrar of Births and Deaths, Cochin Corporation dated 23.05.2023
- Exhibit R1(c) The true copy of Medical Report issued from the General Hospital, Ernakulam dated 10.02.2023
- Exhibit R1(d) The true copy of the receipt issued by the office of the District police Chief, Alappuzha
- Exhibit R1(e) The true copy of the Certificate issued by Dr.A.J.John, Psyciatrist, Nakkada Mission Hospital, Ramanchira, Thiruvalla dated 30.08.2022



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- Exhibit R1(f) The photographs of the child with burn injuries
- Exhibit R1(h) The true copy of the order in O.P. (FC) No.584/2024 dated 13.09.2024
- Exhibit R1(i) The true copy of the receipt issued by Meadows Post Natal Care, Kottakkal dated 11.03.2023
- Exhibit R1(j) The true copy of the judgment passed by the Munsiff's Court, Ernakulam in O.S. 351 / 2023 dated 21-8-2024
- Exhibit R1(k) The true copy of matrimonial advertisement published by the petitioner
- Exhibit R1(l) Two of audio clippings containing the voice message from the petitioner