

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

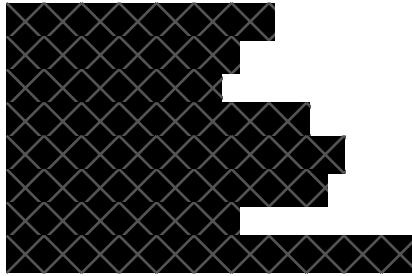
THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 19TH DAY OF JANUARY 2023 / 29TH POUSHA, 1944

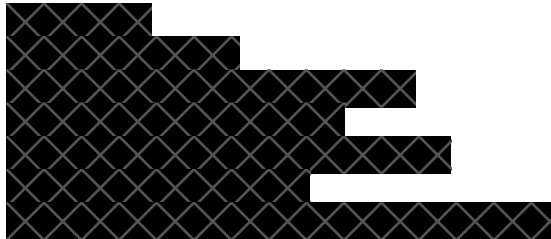
TR.P(C) NO. 476 OF 2022

IN OP 619/2017 OF FAMILY COURT, IRINJALAKUDA

PETITIONER/PETITIONER:

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RESPONDENT/RESPONDENT:

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BY ADVS. T.N.MANOJ
ABHILASH M.J.

THIS TRANSFER PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 19.01.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

"CR"

Dated this the 19th day of January, 2023

ORDER

“Majesty of law continues to hold its head high notwithstanding such scurrilous attacks made by persons who feel that the law courts will absorb anything and everything, including attacks on their honesty, integrity and impartiality. But it has to be borne in mind that such divinity and magnanimity is not its weakness but its strength. It generally ignores irresponsible statements which are anything but legitimate criticism. It is to be noted that what is permissible is legitimate criticism and not illegitimate insinuation. No court can brook with equanimity something which may have tendency to interfere with the administration of justice”..... observed the Honourable Supreme Court in ***Haridas Das v. Usha Rani Banik***, [(2007) 14 SCC 1].

2. The petitioner seeks the transfer of O.P.No.619/2017 (Annexure-1) from the Family Court, Irinjalakuda, on the allegation of bias against the learned Judge. The petitioner is the wife of the respondent. The respondent has filed Annexure-1 petition to declare his marriage with the petitioner null and void.

3. The concise case of the petitioner in the transfer petition is as follows:

- (i) The petitioner is the wife of the respondent. She is a lawyer by profession.
- (ii) The respondent has filed Annexure-1 petition to pass a decree of divorce. The petition is fabricated and false and is not maintainable in law.
- (iii) The respondent had also filed a fabricated original petition before this Court as O.P. (FC)No.66/2021 for the expeditious disposal of the Annexure-1 petition. The learned counsel appearing for the respondent has colluded with the respondent and averred falsehood in the said original petition to mislead this Court.
- (iv) The respondent and his lawyer have committed the offences under Sections 120(B), 191, 193 and 209 of the Indian Penal Code,1808 and Section 2(c) of the Contempt of Courts Act, 1971.

- (v) Immediately on receipt of the notice in Annexure-1 petition, the petitioner filed M.C.No. 86/2017 before the Judicial First-Class Magistrate Court, Irinjalakuda, against the respondent, invoking the provisions of the Protection of Women from Domestic Violence Act, 2005. The respondent's counsel had admitted that the petitioner's ornaments are with the respondent, which is a judicial admission. However, the respondent filed a fabricated counter affidavit in the said case. Hence, the petitioner filed a petition before the learned Magistrate to initiate criminal proceedings against the respondent and his lawyer under Section 340 of the Code of Criminal Procedure, 1973 (in short, 'Cr. PC').
- (vi) The respondent had filed I.A.No.381/2018 (Annexure-13) to deliver interrogatories on the petitioner. The petitioner filed Annexure A15 affidavit to Annexure-13 application. A bare reading of Annexure-15 affidavit would prove that the respondent has filed fabricated petitions.

(vii) On 23.10.2021, the learned Judge considered I.A.Nos.3709/2017, 2664/2019 & 1741/2019 and has passed Annexure-22 common order on the same day. The learned Judge has failed to comply with the Supreme Court rulings on perjury and has allowed the respondent to poison the stream of justice. The above act of the learned Judge is an indication of extraneous consideration, and tantamounts to gross judicial impropriety, indiscipline, lack of integrity, gross misconduct and an act unbecoming of a judicial officer.

(viii) The petitioner had filed I.A.No.8/2021 (Annexure-24) to refer the respondent to a medical board. The respondent filed Annexure-25 objection to the application. The learned Judge dismissed the application by Annexure-27 order. The learned Judge has passed a string of illegal orders on extraneous consideration, which amounts to criminal misconduct and dereliction of duty.

- (ix) The petitioner had filed a complaint before the Registrar of this Court to remove the learned Judge from office, but the complaint was closed.
- (x) Again, the petitioner filed an application before the Family Court for perjury, which was dismissed by Annexure-32 order.
- (xi) The petitioner has lost faith in Family Court because the learned Judge is colluding with the respondent's lawyers. His acts are adversely affecting the administration of justice.
- (xii) The respondent and his lawyers have no regard for the truth and have deliberately defrauded this Court. Hence, Annexure-1 may be transferred from the Family Court, Irinjalakuda, to the Family Court, Ernakulam.

4. The respondent has filed a counter affidavit denying the allegations in the transfer petition and contending as follows:

- (i) The application filed by the petitioner under Section 340 Cr. PC., to initiate proceedings against him, his relatives and his lawyers, has been dismissed by the learned Magistrate.
- (ii) The petitioner had made similar insinuations against the learned Magistrate for passing Annexure R1(a) order.
- (iii) On the request made by the learned Magistrate, the case was transferred by the learned Sessions Judge to the Judicial First-Class Magistrate Court, Irinjalakuda.
- (iv) The petitioner has challenged Annexure R1(a) order by filing Crl. Appeal No.150/2018.
- (v) The petitioner is suffering from Bipolar Affective Disorder, as evidenced by Annexures R1(c) and R1(d), which material fact was suppressed at the time of marriage.
- (vi) The petitioner has complained against the respondent's counsel appearing before the Family Court and this Court.

- (vii) The petitioner's antecedents show that she accuses all the Presiding Officers who pass orders against her. She also accuses the respondent's lawyers.
- (viii) The trial in Annexure-1 petition is scheduled.
- (ix) The respondent is physically disabled, as evidenced by Annexure R1(f) medical certificate, and has difficulty in travelling.
- (x) The petitioner's intention is only to protract the determination of Annexure-1 petition. There are no grounds to transfer Annexure-1 petition. The transfer petition may be dismissed.

5. The petitioner has filed a reply affidavit denying the allegations in the counter affidavit. She has reiterated the contentions in the transfer petition. She has prayed that the transfer petition may be allowed.

6. When the transfer petition came up for admission, this Court had called for a report from the

Family Court on finding that allegations of bias and favouritism have been imputed against the learned Judge.

7. The learned Judge, by report dated 10.08.2022, has informed this Court that Annexure-1 petition is filed by the respondent on 03.07.2017 for a decree to declare his marriage with the petitioner null and void or, in the alternative to pass a decree of divorce. The petitioner has filed her objection. The petitioner has filed several applications in the original petition, including an application under Section 340 Cr. PC. All the applications were dismissed on 20.06.2022 and the order is appended to the report. Subsequently, the respondent filed I.A.No.3709/17 to amend the original petition, which was allowed. Then, the petitioner filed I.A.No.2664/2019 to direct the respondent to return her gold ornaments. Thereafter, this Court directed Annexure-1 to be disposed of

present case because the petitioner has sought the transfer of the petition on the allegation of bias against the learned Judge of the Family Court.

11. The petitioner's grievance is that the respondent has filed a false case against her, and the learned Judge has passed a string of adverse orders against her in a biased and prejudicial manner, in collusion with the respondent and his counsel on extraneous consideration. The learned Judge lacks integrity and propriety, and his acts are unbecoming of a judicial officer.

12. In ***State of W.B. v. Shivananda Pathak*** [(1998) 5 SCC 513], the Honourable Supreme Court has succinctly stated what bias is in the following manner:

“25. Bias may be defined as a preconceived opinion or a predisposition or predetermination to decide a case or an issue in a particular manner, so much so that such predisposition does not leave the mind open to conviction. It is, in fact, a condition of mind, which sways judgments and renders the judge unable to exercise impartiality in a particular case.

26. Bias has many forms. It may be pecuniary bias,

personal bias, bias as to subject-matter in dispute, or policy bias etc”.

13. Again, in ***Govt. of T.N. v. Munuswamy Mudaliar*** [1988 Supp SCC 651], the Honourable Supreme Court has held thus:

“12. A predisposition to decide for or against one party, without proper regard to the true merits of the dispute is bias. There must be reasonable apprehension of that predisposition. The reasonable apprehension must be based on cogent materials. See the observations of Mustill and Boyd, *Commercial Arbitration* 1982 Edn., p. 214. *Halsbury’s Laws of England*, 4th Edn., Vol. 2, para 551, p. 282 describe that the test for bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias”.

14. While dealing with the transfer of cases, on the ground of bias, the Honourable Supreme Court in ***R.Balakrishna Pillai v. State of Kerala*** [(2000) 7 SCC 129], held as follows:

“10.It is true that one of the principles of administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation that there is apprehension that justice will not be done in a given case is not sufficient. Before

transferring the case court has to find out whether the apprehension appears to be reasonable. To Judge the reasonableness of the apprehension, the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must appear to the court to be reasonable, genuine and justifiable. In the present day scenario, if these types of applications are entertained, the entire judicial atmosphere would be polluted with such frivolous petitions for various reasons”.

15. Almost on the above identical lines, the Honourable Supreme Court in ***Harita Sunil Parab v. State of NCT of Delhi and Others***, [(2018) 6 SCC 358] has reiterated the proposition on the law of transfer of a case on the ground of bias, thus:

“8. The apprehension of not getting a fair and impartial enquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard and fast rule can be prescribed for deciding a transfer petition which will always have to be decided on the facts of each case.”

16. Recently, in ***Abraham Thomas Puthooran v. Manju Abraham*** [2022 (1) KLT 317], a Division Bench of this Court held as follows:

“32. When 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 aspersion upon integrity and competence of the Presiding Officer. A petition filed under Section 24 of the Code seeking transfer of case shall not be based on conjectures and mystic maybes. The onus is on the person who alleges bias to substantiate that his apprehensions are reasonable genuine and justifiable”.

17. The exposition of law casts the onus of proof on the shoulders of the person alleging bias to substantiate that his apprehensions are reasonable, genuine and justifiable.

18. The petitioner has made a scathing attack on the learned Judge, questioning his integrity, honesty and impartiality. The reason; the learned Judge has passed a string of orders against her. There is no foundation or material to corroborate the accusation other than the bald and wild allegations in the transfer petition.

19. Irrefutably, the petitioner has not challenged any of the adverse orders passed against her, and the orders have attained finality. Thus, it is to be inferred that the petitioner is indirectly attacking the orders through the transfer petition.

20. There are abundant precedents on the point that an erroneous order cannot be labelled as an order passed with 'bias' or 'favouritism'.

21. In ***L.D. Jaikwal v. State of U.P.*** [(1984) 3 SCC 405], the Honourable Supreme Court observed as follows:

“7. We have yet to come across a Judge who can take a decision which does not displease one side or the other. By the very nature of his work he has to decide matters against one or other of the parties. If the fact that he renders a decision which is resented to by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution. A line has therefore to be drawn somewhere, someday, by someone”.

22. On a comprehensive appreciation of the factual

matrix and in the background of the principles laid down in the above-referred precedents, the inevitable conclusion is that the petitioner has miserably failed to substantiate the allegation of bias. The petitioner cannot arm twist and browbeat the learned Judges to get things done in her own way. This Court sternly warns the petitioner to stop her habit of levelling unsubstantiated insinuations against the learned Judges and undermining their dignity and the majesty of law. With reluctance, I refrain from imposing costs on the petitioner on the faintest perception that the party in person has been ill-advised.

23. In ***Haridas Das v. Usha Rani Banik*** [(2007) 14 SCC 1], the Honourable Supreme Court observed that Judge bashing and using derogatory and contemptuous language against Judges has become a favourite pastime of some people. These statements tend to scandalise and lower the authority of the courts

and cannot be permitted because, for functioning of democracy, an independent judiciary to dispense justice without fear and favour is paramount. Its strength is the faith and confidence of the people in that institution. That cannot be permitted to be undermined because that will be against the public interest. Judiciary should not be reduced to the position of flies in the hands of wanton boys. Judge bashing is not and cannot be a substitute for constructive criticism”

The transfer petition sans substance or merits and is hence dismissed.

Sd/-

C.S.DIAS,JUDGE

DST/19.01.23

//True copy/

P.A.To Judge

APPENDIX

PETITIONER ANNEXURES

- ANNEXURE1 DIVORCE PETITION
- ANNEXURE2 M.C. 86/2017 CASE UNDER D.V ACT TO PRODUCE THE 63.57 SOVEREIGN GOLD ORNAMENT OF THE PETITIONER HEREIN BEFORE THE COURT AND RETURNING IT TO THE PETITIONER HEREIN. THE ORIGINAL PETITION 86/2017 FILED BEFORE THE JFCM COURT CHALAKUDY AND IT HAS BEEN TRANSFERRED TO JFCM IRINJALAKUDA AND CASE NUMBER CHANGED TO 57/2018
- ANNEXURE3 COUNTER FILED BY THE RESPONDENT HEREIN IN THE M.C 86/2017.
- ANNEXURE4 THE CMP 1196 OF 2018 ORDER PASSED BY HON'BLE JFCM COURT CHALAKUDY
- ANNEXURE5 TRUE COPY OF THE ORIGINAL PRESCRIPTION GIVEN BY DR.JEEJAN
- ANNEXURE6 TRUE COPY OF CERTIFICATE FROM LOURDES HOSPITAL
- ANNEXURE7 CERTIFIED COPY OF THE AMENDMENT PETITION I.A.3709/2017
- ANNEXURE8 CERTIFIED COPY OF THE MEDICAL RECORDS OF THE RESPONDENT HEREIN TAKEN FOR MENTAL ILLNESS AT ELITE MISSION HOSPITAL
- ANNEXURE9 CERTIFIED COPY OF PETITION 2144 (A) /2018
- ANNEXURE10 CERTIFIED COPY OF THE STAY PETITION
- ANNEXURE11 CERTIFIED COPY OF THE COUNTER I.A.2664/2019
- ANNEXURE12 CERTIFIED COPY OF THE PETITION MJC 3/2020
- ANNEXURE13 CERTIFIED COPY OF PETITION I.A.381/2018
- ANNEXURE14 CERTIFIED COPY OF PROCEEDINGS SHEETS IN

I.A.381/2018

- ANNEXURE15 CERTIFIED COPY OF AFFIDAVIT IN 381/2018
- ANNEXURE16 CERTIFIED COPY OF I.A.1741/2019
- ANNEXURE17 TRUE COPY O.P (FC) 66 OF 2021
- ANNEXURE18 CERTIFIED COPY OF THE PETITION I.A.579/2018
- ANNEXURE19 CERTIFIED COPY OF PROCEEDINGS IN I.A.579/2018
- ANNEXURE20 CERTIFIED COPY OF MEDICAL REPORT OF PETITIONER
- ANNEXURE21 CERTIFIED COPY OF COMMON ORDER IN I.A.3709/2017 AND I.A.1741/2019
- ANNEXURE22 CERTIFIED COPY OF ORDER IN I.A.2664/2019
- ANNEXURE23 CERTIFIED COPY OF THE MEDICAL EXAMINATION REPORT OF RESPONDENT HEREIN
- ANNEXURE24 CERTIFIED COPY OF THE I.A.8/2021 PETITION
- ANNEXURE25 CERTIFIED COPY OF THE COUNTER FILED TO I.A.8/2021 PETITION BY THE RESPONDENT HEREIN. IA NUMBER 1739/21 IN THE COUNTER AND IT ACCEPTED BY THE HON'BLE FAMILY COURT IRINJALAKUDA. THIS DOCUMENT PETITIONER HEREIN RECEIVED FROM THE HON'BLE FAMILY COURT IRINJALAKUDA
- ANNEXURE26 CERTIFIED COPY OF DEPOSITION OF THE RESPONDENT GIVEN ON OATH
- ANNEXURE27 CERTIFIED COPY OF THE ORDER PASSED ON I.A.8/2021 PETITION
- ANNEXURE28 CERTIFIED COPY OF THE COMPLAINT UNDER SECTION 340(1) I.A 16/2022
- ANNEXURE29 TRUE COPY OF THE DOCUMENTS OBTAINED FROM HON'BLE HIGH COURT REGISTRAR OFFICE THROUGH RTI ACT.

ANNEXURE30 CERTIFIED COPY OF THE I.A 17/2022

ANNEXURE31 CERTIFIED COPY OF THE I.A 18/2022. CITATIONS RELATED TO CR.P.C SECTION 340(1) (PERJURY)

ANNEXURE32 CERTIFIED COPY OF THE COMMON ORDER DISMISSED ALL THE PETITIONS UNDER SECTION 340(1) CR.PC

ANNEXURE33 CERTIFIED COPY OF THE AMENDED ANNEXURE - A1 DIVORCE PETITION

ANNEXURE34 AADHAR CARD OF PETITIONER (IDENTITY CARD OF THE PETITIONER)

ANNEXURE-A1 A TRUE COPY OF THE SUBMISSION FILED IN THE DOMESTIC CASE M.C.86/2017 BEFORE THE HON'BLE JFCM COURT CHALAKUDY ON 28TH OCTOBER 2017. FROM THIS DOCUMENT HON'BLE HIGH COURT CAN BE FORTIFIED BEYOND REASONABLE DOUBT THAT THE FACT STATED IN THE PARAGRAPH 2 AND 3 OF THE COUNTER AFFIDAVIT IS FALSE AND UTTER LIE

ANNEXURE-A2 A TRUE COPY OF THAT ARGUMENT NOTES FILED IN THE CRIMINAL APPEAL NO.150 OF 2018 BEFORE THE HON'BLE SESSIONS COURT THRISSUR. FROM THIS DOCUMENT HON'BLE HIGH COURT CAN BE FORTIFIED BEYOND REASONABLE DOUBT THAT THE FACT STATED IN THE PARAGRAPHS 4,5 AND 6 OF THE COUNTER AFFIDAVIT IS FALSE AND UTTER LIE

RESPONDENT'S ANNEXURES

ANNEXURE R1 (a) TRUE COPY OF THE ORDER DATED 09.04.2018 IN CMP 1196/2018 OF THE COURT OF THE JUDICIAL MAGISTRATE OF 1ST CLASS AT CHALAKUDY

ANNEXURE R1 (b) TRUE COPY OF THE MEMORANDUM OF APPEAL NO.150/2018 DATED 19.05.2018 FILED BEFORE THE COURT OF THE SESSIONS JUDGE AT THRISSUR

ANNEXURE R1 (c) TRUE COPY OF THE MEDICAL REPORT DATED 28.05.2019 OF THE MEDICAL BOARD GOVERNMENT MEDICAL COLLEGE HOSPITAL, THRISSUR

ANNEXURE R1 (d)	TRUE COPY OF THE DISCHARGE SUMMARY DATED 15.10.2016 OBTAINED FROM LOURDES HOSPITAL AT ERNAKULAM
ANNEXURE R1 (e)	TRUE COPY OF THE COMMON ORDER DATED 20.06.2022 OF THE FAMILY COURT, IRINJALAKUDA IN IA 2144(a)/2018 AND CONNECTED PETITIONS
ANNEXURE R1 (f)	TRUE COPY OF THE MEDICAL CERTIFICATE DATED 21.05.2008 ISSUED BY THE GOVERNMENT MEDICAL COLLEGE HOSPITAL, THRISSUR

