

Vipin P G Vs State Of Kerala

Court: High Court Of Kerala

Date of Decision: Jan. 31, 2025

Acts Referred: Constitution of India, 1950 Article 21

Hon'ble Judges: C.S.Dias, J

Bench: Single Bench

Advocate: P.Jinish Paul, Aswini S., Sneha V., T.C.Krishna, Vidhya Kuriakose, Amicus Curiae, Thomas C.Abraham

Final Decision: Disposed Of

Judgement

C.S.Dias, J.

1. Is it permissible to register a marriage solemnized outside India between an Indian citizen and a foreign national under the Special Marriage Act?

2. The 1st petitioner, an Indian citizen, married the 2nd petitioner, an Indonesian citizen, on 01.02.2014 at the office of the Religious Affairs Republic,

Jakarta, Indonesia. They have a child born in their wedlock. Currently, the petitioners are residing in Poomangalam Grama Panchayath, Thrissur. To

formally recognise their marriage, the petitioners have submitted Ext.P3 joint application before the Marriage Officer (the 3rd respondent) to register

their marriage under the Special Marriage Act. Instead of registering the marriage, the 3rd respondent has sought for a clarification from the District

Marriage Officer. Regrettably, the 2nd respondent has not responded to the inquiry. The petitioners have fulfilled all the conditions stipulated under the

Special Marriage Act. The refusal on the part of the respondents to register the petitioners' marriage is violative of Article 21 of the Constitution

of India. Hence, the writ petition.

3. Heard; Sri. Jinish Paul, the learned counsel for the petitioners, Smt.Vidya Kuriakose, the learned Government Pleader, Sri. T.C. Krishna, the

learned Deputy Solicitor General of India and Sri.Thomas C.Abraham, the learned Amicus Curiae.

4. Ext.P1 marriage certificate proves that the petitioners' marriage was solemnised according to the civil laws of Indonesia. The petitioners now desire

to get their marriage registered as per the provisions of the Special Marriage Act.

5. The preamble of the Special Marriage Act states that it is an Act to provide a special form of marriage in certain cases and for registration of such

and certain other marriages and for divorce. Furthermore, Sub-Section (2) of Section 1 of the Act states that the Act applies to the whole of India and

to the citizens of India domiciled in the territories to which the Act extends. Chapter II of the Act delineates the procedure for the solemnisation of

special marriages, and Chapter III lays down the procedure for the registration of marriages celebrated in other forms.

6. It is pertinent for the case at hand to juxtapose the provisions of the Special Marriage Act with that of the Foreign Marriage Act.

7. The preamble of the Foreign Marriage Act, 1969, reads as follows:

“An Act to make provision relating to marriage of citizens of India outside India.”

8. Section 2(c) of the Foreign Marriage Act defines a foreign country as a country or place outside India. Likewise, Sections 17, 23, and 24 of the said

Act deal with the registration of foreign marriages solemnized under other laws, the recognition of marriages solemnized under the law of other

countries, and the certification of documents of marriages solemnized in accordance with local law in a foreign country, respectively.

9. On a comparison of the provisions of the Special Marriage Act and the Foreign Marriage Act, it is apparent that a marriage between parties, of

whom at least one is a citizen of India, can be solemnised and/or registered or certified before a Marriage Officer in a foreign country under the

provisions of the Foreign Marriage Act and a marriage between two persons can be solemnised and/or registered in India under the provisions of the

Special Marriage Act.

10. While considering the validity of a marriage performed in a foreign country, a Bench of this Court in *Gracy and others v. P.A.Mathiri and others*

(2005 KHC 948) has held as follows:

“3. The Foreign Marriage Act generally covers the marriages performed abroad where one of the parties alone is an Indian citizen. The Act covers mainly four

types of factual situations; (1) the marriage solemnized before the Marriage Officer appointed by the Government of India in the foreign country, in accordance with

S.4, 5, 9, 11 and 13; (2) the deemed solemnization under S.17; (3) recognition of marriages solemnized under the law of the foreign country where the marriage is

performed and the certification thereof under S.23 read with S.24 of the Act; and (4) marriages solemnized in a foreign country otherwise than under the provisions of

the Act.

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5. The second situation is registration of a foreign marriage, where marriage was duly solemnized in a foreign country in accordance with the law of that country

between parties of whom one at least is a citizen of India. The procedure is provided under S.17 of the Act. An application has to be made for the purpose of

registration before the Marriage Officer and the prescribed fee also has to be remitted. For the registration of the marriages already performed according to the law of

the country also, the parties have to satisfy the conditions under S.4. Under S.17, a certificate has to be entered in the prescribed form and in the prescribed manner in

the Marriage Certificate Book and the certificate has to be signed by the parties to the marriage and three witnesses. Once a marriage is thus registered, such marriage

shall be deemed to have been solemnized under the Act as provided under S.17(6) of the Act, from the date of such registration.

6. The third is a situation where the marriage is solemnized under the law of the concerned foreign country. S.23 provides that if the Central Government is satisfied

that the law in force in any foreign country for solemnization of marriages contains provisions similar to those contained in the Foreign Marriage Act, 1969, the

Government may, by notification in the official gazette declare that the marriages thus solemnized under the law of the foreign country be recognised by the courts in

India as valid. S.24 deals with the certification of documents of such marriages. If a party to such marriage solemnized according to the law of the foreign country and

which is recognised by the Government of India produces a copy of entry in respect of the marriage in the marriage register of that country certified by the

appropriate authority in that country to be a true copy of that entry, the Marriage Officer appointed in the concerned country under S.3 of the Foreign Marriage Act,

upon payment of such prescribed fees and upon such enquiry and on being satisfied that the copy produced is a true copy of the entry in the Register of that

country, he shall certify upon the copy produced before him that "he is satisfied the copy is a true copy of the entry in the marriage register". A true translation is

also liable to be certified as above. S.24(2) provides that "a document relating to a marriage in a foreign country issued under Sub-s.(1) shall be admitted in evidence

in any proceedings as if it were a certificate duly issued by the appropriate authority of that country". S.25 provides that every certified copy purporting to be signed

by the Marriage Officer of an entry of a marriage in the Marriage Certificate Book shall be received in evidence without production or proof of the original.

7. As far as all the above three factual situations are concerned, i.e., (1) the marriage solemnized in accordance with the procedure under the Act, (2) deemed

solemnization as per S.17 and (3) the certification under S.23, the evidence is the certification of the Marriage Officer in the foreign country. The only difference in the

third situation is that the certification is on the copy of the marriage certificate of the concerned country. In other words, no attested copy of the certificate of

marriage performed in a foreign country, be it attested by a notary, shall be accepted in evidence as proof of valid marriage. The same has to be duly certified by the

Marriage Officer appointed by the Government of India in the concerned country.

11. The view expressed in *Gracy's case*, has been reiterated by another Bench of this Court in *Thresiamma*

Manshoven v. Manshoven Jacques Joseph (2019 (3) KHC 404).

12. On analysing the scheme and provisions of both the Acts and their interpretation by this Court, there is no doubt that the petitioners are precluded

from getting their marriage registered under the provisions of the Special Marriage Act. Hence, the stand of the 3rd respondent in refusing to register

the petitioner's marriage is justifiable.

13. During the pendency of the writ petition, this Court impleaded the Marriage Officer, Embassy of India, Indonesia, as the additional fourth

respondent and directed the learned DSGI to ascertain the modalities for registering/certifying the petitioners' marriage through online means.

14. The learned DSGI submitted that the petitioner's marriage certificate was attested by the Embassy of India, Indonesia.

15. On verifying the Ext.P1 marriage certificate, this Court finds that Ext.P1 is only attested by the Embassy of India, Indonesia, and not

registered/certified under the Foreign Marriage Act.

16. This Court, in *Arun R.K. v. State of Kerala* (2023 (2) KHC 391) and in a series of decisions, has held that the Registering Authority under the

Special Marriage Act cannot refuse to solemnise marriage through the online mode. This Court has outlined the procedural framework to be followed

in such cases.

17. Given the fact that the petitioners are currently residing in Kerala and Ext.P1 marriage certificate has already been attested by the Embassy of

India in Indonesia, this Court is inclined to extend the guidelines laid down in *Arun.R.K.* case to the petitioners, to facilitate the

registration/certification of their marriage according to the provisions of the Foreign Marriage Act, through the online mode, which would obviate the

petitioners from travelling to Indonesia for the purpose. If the petitioners submit an online request for the above purpose, the 4th respondent shall

compassionately consider the application in accordance with the law and register/certify the petitioners' marriage. The assistance rendered by the

learned DSGI and the learned Amicus Curiae is appreciated.

Thus, the writ petition is disposed of in the following manner:

(i) The petitioners' prayer to register their marriage under the provisions of the Special Marriage Act is declined.

(ii) The petitioners are at liberty to submit an online request to the 4th respondent to get their marriage registered/certified as per the provisions of the

Foreign Marriage Act.

(iii) If the petitioners submit the request, the 4th respondent shall process it through video conferencing as per the guidelines laid down in *Arun.*

R.K. case (supra).

(iv) The office of the learned DSGI shall extend all the necessary support to the petitioners for the above purpose.