

C.R

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 8TH DAY OF JUNE 2023 / 18TH JYAISHTA, 1945

OP (FC) NO. 221 OF 2023

AGAINST THE ORDER DATED 20.04.2023 IN I.A NO.01/2022 IN

O.P(G&W)NO.1408/2022 OF FAMILY COURT, ALAPPUZHA

PETITIONER/1ST RESPONDENT:

ANEESA F, AGED 30 YEARS, D/O FASAL K.U,
KURUKANCHIRAYIL, PONNADU P.O.,ALAPPUZHA., PIN -
688 538

BY ADV K.S.HARIHARAPUTHRAN

RESPONDENT/PETITIONER:

SHEFEEKMON K.I, AGED 36 YEARS, S/O IBRAHIM K.A,
KORATH SOUTH, ARYADU, AVALUKUNNU P.O.,
ALAPPUZHA., PIN - 688 006

BY ADVS.
JOSE ANTONY
K.NAJEEB (K/340/1995)

THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON
08.06.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.R.

J U D G M E N T

A. Muhamed Mustaque, J.

This original petition is filed at the instance of the mother challenging an order passed by the Family Court, Alappuzha allowing the custody of the minor child, namely, Muhammad Ajwad Fassi, a three and half years old boy, to the father. The elder child, who is totally blind is already with the father.

2. The strained relationship apparently forced the mother to leave the matrimonial home (according to her version). The husband's version is that she eloped with another person.

3. Placing reliance on the FIR and the sworn statement given by the mother before the Magistrate, the Family Court arrived at a conclusion that she had eloped with another person for pleasure and that the wayward life chosen by her would prejudice the welfare of the children.

4. We had an opportunity to interact with both parties. According to her, due to domestic violence, she was forced to

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leave the matrimonial home. Her father stated before us that it is to get rid of the marriage she went with a friend of her brother to make it appear as if she had eloped with someone. We are not believing either of the stories put forward before us now. What has disturbed us is the language used by the Family Court Judge. Merely for the reason that a woman is found in the company of another male, Family Court came to the conclusion that she went for pleasure with someone else. The highly distasteful language depicts the mind set of an officer of high rank in the district judiciary.

5. There may be many circumstances when one may have to leave the matrimonial home. If a woman is found with another person, it cannot lead to an assumption that she went for pleasure. The moral judgment reflected in such orders would defeat the objective of inquiry in the matters of child custody.

6. In a matter related to the child's custody, the welfare aspect alone has to be considered first. A man or woman may be bad for someone in a contextual relationship, that does not necessarily mean that the person is bad for his/her child. A mother may be morally bad in the societal sense, but that mother may be good for the child as far as the

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welfare of the child is concerned. The so called morality is created by society based on their own ethos and norms and should not necessarily reflect in a contextual relationship between a parent and child.

7. The mother's care for a child is being adored in this country for the reason that the mother took care of the child in her womb for nine months and she knows the pain and sufferings of delivery. The Court will have to examine how far the child is protected when custody is given to the mother or the father. The mother may be bad for the father or vice versa but the mother can be good for her child. These are all matters to be analysed after adducing evidence.

8. Taking note of the facts and circumstances, we are of the view that cyclical custody to parents would be in best interest of both. We give custody to the mother on alternate Friday at 5 pm till the next Friday at 5 pm. The child shall be handed over and returned from the premises of the Family Court, Alappuzha.

9. This order will be operative from next Friday onwards. On the last occasion, we gave custody of the children to the mother. The children have been brought back and handed over to the father today. The father shall

OP (FC) NO. 221 OF 2023

..5..

handover the children to the mother on next Friday evening at 5 pm. Accordingly, we set aside the impugned order.

This original petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE

JUDGE

Sd/-

SOPHY THOMAS

JUDGE

PR

OP (FC) NO. 221 OF 2023

..6..

APPENDIX OF OP (FC) 221/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF OP (G&W) NO.1408/2022 DATED 24-12-2022.
Exhibit P2	TRUE COPY OF IA 01/2022 DATED 24-12- 2022, FILED IN EXT. P1 OP.
Exhibit P3	TRUE COPY OF THE OBJECTION DATED 05- 04-2023, FILED IN EXT. P2 IA.
Exhibit P4	TRUE COPY OF THE ORDER DATED 20-04- 2023 IN IA NO. 01/2022 IN OP NO. 1408/2022, ON THE FILES OF THE FAMILY COURT, ALAPPUZHA.