

## Litigation News

Kerala High Court condemns distasteful language, moral judgment by family court against mother in child custody case

*The family court was found to have jumped to the conclusion that the mother had eloped with another person for pleasure and that the "wayward life" chosen by her would prejudice the welfare of the children.*



Justice A Muhamed Mustaque, Justice Sophy Thomas and Kerala HC

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The Kerala High Court recently came down heavily on a family court judge for the *distasteful* language used in an order granting sole custody of a minor child to the father [***Aneesa F v Shefeekmon KI***]

A division bench of Justices **A Muhamed Mustaque** and **Sophy Thomas** noted that the family court judge had made unsavoury comments against the mother of the child.

In particular, the family court was found to have jumped to the conclusion that the mother had eloped with another person *for pleasure* and that the "*wayward life*" chosen by her would prejudice the welfare of the children.

The High Court opined that the language used by the family court in its order deserved to be condemned.

***"What has disturbed us is the language used by the Family Court Judge. Merely for the reason that a women 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,"*** the High Court said.

The Court was dealing with a plea moved by the child's mother challenging the family court's order.

The father of the child alleged that the mother had left the matrimonial house to be with another man, while the mother claimed that she had to leave the house due to domestic violence.

The division bench said it does not care to believe or disbelieve either of the versions put to the Court.

However, the judges added that just because a woman was found in the company of another man, it cannot be assumed that she was having an affair or that she is a bad mother.

***"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,"*** the High Court's order stated.

The bench further emphasised that it is not *moral judgment* but the welfare of the child that should be a deciding factor in child custody disputes.

*"A mother may be morally bad in the societal sense, but that mother may be good for the child as far as the 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,"* the Court said.

In the present case, the Court decided that granting *cyclical custody* to parents would be in the best interest of the child.

Hence, the High Court set aside the order of the family court and directed the parents to take turns, on a weekly basis, in caring for the child.

### [Read Judgment]

Attachment

PDF Aneesa F v Shefeekmon KI.pdf  
Preview

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report by @GitiPratap <https://t.co/qgDXCm3SfG>  
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Family Court Kerala High Court Child Custody