

Kumari Junith Vs. State of Kerala

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Court : Kerala

Decided On : Jan-31-2013

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Kumari Junith

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR THURSDAY, THE 31ST DAY OF JANUARY 2013 11TH MAGHA 193 CrI.MC.No. 383 of 2013 ()
----- AGAINST THE ORDER/JUDGMENT IN
CrI.Rev.Pet.NO.738/2012 DATED 26 11-2012 CC.52/2012 of JUDICIAL FIRST
CLASS MAGISTRATE COURT,CHITTUR CRIME NO. 384/2009 OF CHITTUR
POLICE STATION , PALAKKAD -----
PETITIONER/ACCUSED NO.2: ----- KUMARI
JUNITH, W/O. BALACHANDRAN,AGED 4 YEARS,HINDI TEACHER, S.N.U.P
SCHOOL,NALLAMADANCHALLA,VILAYODI, VANDITHAVALAM
VILLAGE,CHITTUR TALUK,PALAKKAD. BY ADV. SRI.U.BALAGANGADHARAN
RESPONDENT(S)/STATE AND COMPLAINANT:
----- 1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA,ERNAKULAM -682 031.

2. RAMAKRISHNAN, AGED 4 YEARS, HEAD MASTER, S.N.U.P. SCHOOL, NALLAMADANCHALLA, VILAYODI, VANDITHAVALAM VILLAGE, CHITTUR TALUK, PALAKKAD -678 101. R1 BY PUBLIC PROSECUTOR SRI.T.RAMAPRASAD UNNI THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31-01-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts CRMC.NO.383/2013 APPENDIX PETITIONER'S ANNEXURES: ANNEX A COPY OF THE PRIVATE COMPLAINT DATED 13 11/2009 IN C.M.P.NO.10341/2009 ANNEX B COPY OF THE FINAL REPORT DATED 23 12/2009 ANNEX C COPY OF THE PROTEST COMPLAINT DATED 10 12/2010 BEFORE THE JFCM, CHITTUR, PALAKKAD ANNEX D COPY OF THE DEPOSITION OF DE-FACTO COMPLAINANT DATED 26 08/2011 ANNEX E COPY OF THE DEPOSITION OF MRS.SACHU DATED 01 10/2011 ANNEX F COPY OF THE DEPOSITION OF HAJIRA BEEVI DATED 22 10/2011 ANNEX G COPY OF THE ORDER DATED 07 01/2012 PASSED BY THE JFCM, CHITTUR IN C.M.P.NO.9630/2010 ANNEX H COPY OF THE ORDER DATED 26 11/2012 PASSED BY THIS HONOURABLE COURT IN CRL.R.P.NO.738 OF 2012. RESPONDENT'S ANNEXURES: NIL /TRUE COPY/ P.A.TO.JUDGE sts T.R. RAMACHANDRAN NAIR, J.

~~~~~ Criminal

M.C.No.383/2013

~~~~~ Dated this the 31st day of January, 2013

ORDER

The challenge in this criminal miscellaneous case is against Annexure-G order passed by the learned Magistrate whereby cognizance is taken against the petitioner for an offence punishable under Section 406 of the Indian Penal Code. The petitioner is the second accused in C.C.No.52/2012 on the file of the Judicial First Class Magistrate Court, Chittur.

2. It is a case where the second respondent is the de facto complainant. The petitioner is working as a Hindi Teacher in S.N.U.P School. The other accused are a Peon and a Teacher of the same school.

3. On a reading of Annexure-G, it can be seen that the court found that there is sufficient ground to proceed against the second accused alone and there are no

materials to proceed with the against the other accused, namely, accused Nos.1 and 3, and summons was ordered against the second accused for appearance on 10/04/2012. The petitioner thereafter filed CrI.R.P.No.738/2012 before this Court challenging the same and the order passed by this Court therein has been produced as Annexure-H.

4. When the case came up on the last occasion, this Court directed the petitioner to furnish a copy of the criminal miscellaneous case to the learned counsel appearing for the second respondent. CrI.M.C No.383/2013 -:2:- 5. Heard the learned counsel for the petitioner, learned Public Prosecutor as well as the learned counsel appearing for the second respondent.

6. Learned counsel for the second respondent submitted that in the light of the order passed by this Court as Annexure-H, it can be safely concluded that the petitioner cannot maintain this criminal miscellaneous case since she has withdrawn the criminal revision petition to take up all the contentions before the trial court.

7. Learned Public Prosecutor also submitted that in the light of order passed by this Court as Annexure-H, this criminal miscellaneous case cannot be maintained.

8. Learned counsel for the petitioner vehemently submitted that the contentions of the petitioner have not been gone into in detail by this Court in Annexure-H and therefore, nothing precludes the petitioner from filing a criminal miscellaneous case. I cannot agree. Herein the order was directly under challenge in CrI.R.P.No.738/2012. The order passed by this Court will show that the criminal revision petition was allowed to be withdrawn without prejudice to the right of the petitioner to take up her contentions taken in criminal revision petition during trial before the trial court. Therefore, evidently, the same binds the petitioner. She will have to take up all the contentions before the trial court itself. When there is a specific provision under the Code of Criminal Procedure under which the CrI.M.C No.383/2013 -:3:- party has got a remedy, it is well settled that the jurisdiction under Section 482 of the Code of Criminal Procedure also cannot be invoked. Herein, the petitioner has chosen to avail the remedy under Section 397, namely, the revisional jurisdiction of this Court, for that reason also, this criminal

miscellaneous case is not entertainable. Therefore, leaving open the remedy of the petitioner to approach the trial court at the appropriate stage, the criminal miscellaneous case is dismissed. Sd/- (T.R. Ramachandran Nair, Judge.) ms

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