

K.Vijayan Vs. State of Kerala

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Court : Kerala

Decided On : Jan-31-2013

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

Appellant : K.Vijayan

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. 4046 of 2012 () ----- CRIME NO. 1323/2012 OF PAYYANNUR POLICE STATION , KANNUR. PETITIONERS/ACCUSED NO.1 AND 2.----- 1. K. VIJAYAN, AGED 3 YEARS, S/O.NARAYANAN, KOTTIYAN HOUSE, ALAPPADAMBA AMSOM, KUNDOOL.

2. BALAKRISHNAN. P.P., AGED 4 YEARS, S/O.RAMAN, PAZHAYAPURAYIL HOUSE, ALAPPADAMBA AMSOM, P.O. ETTUKUDUKKA. BY ADV. SRI.M.V.AMARESAN. RESPONDENT/COMPLAINANT:

----- STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.V.H. JASMINE. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 31-01-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: rs. CrI.MC.No. 4046 of 2012 APPENDIX

PETITIONER'S ANNEXURES:- ANNEXURE I- TRUE COPY OF F.I.R. IN CRIME NO.1323/2012 OF PAYYANUR POLICE STATION. ANNEXURE I(A)- TRUE COPY OF FIS GIVEN BY THE DEFACTO COMPLAINANT REJANI IN CRIME NO.1323/2012 OF PAYYANNUR POLICE STATION. ANNEXURE II- TRUE COPY OF THE REPORT FILED BY PAYYANNUR POLICE SEEKING PERMISSION TO INCORPORATE SECTION 36 I.P.C. ANNEXURE III- TRUE COPY OF REPORT SUBMITTED BY THE PAYYANNUR POLICE BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE, SEEKING CANCELLATION OF THE BAIL. ANNEXURE IV TRUE COPY OF THE ORDER IN C.M.P. NO.5024/12 IN 1323/12 DATED 06 11/2012 PASSED BY JUDICIAL FIRST CLASS MAGISTRATE COURT, PAYYANNUR. ANNEXURE V TRUE COPY OF THE PETITION AS C.M.P. NO.6672/2012 ON 21/12/2012 FILED BY THE PETITIONERS BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE, PAYYANNUR. ANNEXURE VI TRUE COPY OF THE ORDER DATED 21 12/2012 IN C.M.P. NO.6672/2012 PASSED BY JUDICIAL FIRST CLASS MAGISTRATE, PAYYANNUR. ANNEXURE VII TRUE COPY OF THE ORDER OF NON BAILABLE WARRANT AGAINST THE PETITIONERS ON 21/12/2012 ISSUED BY JUDICIAL FIRST CLASS MAGISTRATE, PAYYANNUR. RESPONDENT'S ANNEXURES:- NIL. //TRUE COPY// P.A. TO JUDGE rs. T.R. RAMACHANDRAN NAIR, J.

~~~~~ Criminal M.C.No.4046/2012

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

ORDER

The petitioners are accused involved in offences under Section 354 read with Section 34 of the Indian Penal Code. Annexure-I is the copy of the First Information Report in Crime No.1323/2012 of Payyannur Police Station. The petitioners were enlarged on bail on 06/11/2012. Thereafter, the Investigating Officer filed a report before the court below seeking to incorporate of Section 366 of the Indian Penal Code and to investigate the crime as Annexure-II. The petitioners have filed this criminal miscellaneous case apprehending cancellation of the bail in the light of Annexure-III report submitted by the Investigating Officer before the court below seeking cancellation of the bail. The learned Magistrate

thereafter ordered notice to the petitioners. According to the learned counsel for the petitioners, in the light of the Judgment of this Court in Thomas v. State of Kerala [2008 (3) KLT 248], even if there is an alteration of a minor offence into a grave offence, the Magistrate cannot deny the benefits of earlier bail granted in regard to the minor offence. The pleadings of the petitioners in para.6 is to the effect that instead of dismissing Annexure-III, the trial court required the petitioners to be present before the court and the matter was posted to the next day. Again the petitioners filed an application seeking CrI.M.C No.4046/2012 -:2:- two weeks time to appear which also was dismissed and a Nonailable Warrant was issued.

2. Remarks were called for from the learned Magistrate by this Court and a report has been forwarded along with a letter dated 05/01/2013. The same will show that bail was granted to the petitioners as per order in C.M.P.No.5024/2012 dated 06/11/12 on condition of executing bond for `20,000/- with two solvent sureties each for the like sum. A report was filed by the Investigating Officer for adding Section 366 of the Indian Penal Code on 19/11/2012 and again on 22/11/2012 another report was filed for cancelling the bail, which was being posted for hearing on several days and on 20/12/2012, the court below ordered that the accused shall appear before the court on 21/12/2012 but they did not appear on that day and the learned counsel appearing for the petitioners therein filed an application as C.M.P.No.6672/2012 seeking two weeks time for appearance and the said application was dismissed and a Nonailable Warrant against the accused was ordered. It is also informed that there is no order in C.M.P.No.5024/2012 of cancellation of bail.

3. Learned Public Prosecutor submitted that since the offence under Section 366 IPC was revealed, the two reports have been filed as the petitioners have to be questioned.

4. This Court by interim order dated 01/01/2013 directed that the petitioners will not be arrested and the case was posted to 04/01/2013 and the said interim order is continuing. CrI.M.C No.4046/2012 -:3:- 5. The learned counsel for the petitioners submitted that in the meanwhile, during the last week, the police has already filed a final report with regard to the offence under Section 366 IPC also and, therefore,

the requirement of further questioning of the petitioners may not be there.

6. Heavy reliance is placed on the dictum laid down by this Court in Thomas's case [supra]. Therein, this Court was of the view that when a minor offence is altered into a grave crime, that will disentitle the accused to the liberty of being released on bail granted to him earlier in relation to minor offence. But it was also observed that mere incorporation of a grave offence after enlargement of the accused on bail cannot be a reason for cancellation of bail granted for minor offence. Whether the offence under Section 366 I.P.C is attracted or not is not a question which can be gone into at this stage by this Court. But as already noted above, the bail has not been cancelled and only for non appearance, a Non Bailable Warrant was issued against the petitioners. Therefore, the learned Magistrate will pass appropriate orders in the matter and will find out whether in the light of the submission of the final report any further questioning of the petitioners is required. If the personal presence of the petitioners is required, a specific order to that effect will be issued by the court. The criminal miscellaneous case is disposed of as above. Sd/- (T.R. Ramachandran Nair, Judge.) ms

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