

Sibi Vs. State of Kerala

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Court : Kerala

Decided On : Jul-30-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Sibi

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN TUESDAY, THE 30TH DAY OF JULY 2013 8TH SRAVANA, 1935 CrI.MC.No. 3190 of 2013 ----- AGAINST THE ORDER/JUDGMENT IN CP NO.139/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT I, MAVELIKKARA PETITIONER(S)/ACCUSED: ----- SIBI, AGED 3 YEARS, S/O. BABU, THATTUPURAKKAL PADEETHATHIL, ARUNOOTIMANGALAM P.O.,ARUNOOTIMANGALAM, MAVELIKKARA, ALAPPUZHA DISTRICT. BY ADVS.SRI.M.V.THAMBAN SRI.R.REJI SMT.THARA THAMBAN SRI.B.BIPIN RESPONDENT(S)/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM, REPRESENTING THE EXCISE INSPECTOR, EXCISE RANGE, MAVELIKKARA, ALAPPUZHA DISTRICT

101. BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30-07-2013, THE COURT ON

THE SAME DAY PASSED THE FOLLOWING: Kss V.K.MOHANAN, J.

----- Crl.M.C.No.3190 of 2013 -----

Dated this the 30th day of July, 2013 ORDER The petitioner is the sole accused in Crime No.335 of 2005 of Excise Range, Mavelikara. According to the petitioner, though he is an accused in the above crime, he was not arrested so far. It is the further case of the petitioner that, now NBW is pending against him and therefore he apprehends that in case of his surrender before the court below, he is likely to be sent to jail. Therefore, the present M.C. is filed under Section 482 of Cr.P.C. with a prayer to re-call the NBW issued against him in C.P.No.139 of 2012 on the file of the Judicial First Class Magistrate Court-I, Mavelikara.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. Having regard to the facts and circumstances involved in the case, it appears that, the petitioner is an accused in a case wherein the offence alleged against him is under Section 8(1) & (2) of the Kerala Abkari Act. This Court Crl.M.C.No.3190 of 2013 :-2-: is not in a position to ascertain as to why the petitioner is not arrested during the investigation stage and also not aware of the reason for non-appearance of the accused in the trial court. If that be so, it is for the petitioner to approach the court below or to surrender before the court in which C.P.No.139 of 2012 is pending and convince the court the reason for his absence during the previous proceedings. This Court will not be justified in stalling the proceedings initiated to secure the presence of the petitioner. Therefore, it is only just and proper to relegate the petitioner to approach the court below. In the result, this M.C. is disposed of relegating the petitioner to approach the court of Judicial First Class Magistrate-I, Mavelikara and he can surrender before the said court, if he is so advised, and seek orders to recall the NBW if any pending or for regular bail. Accordingly, there will be a direction to the learned Magistrate that, in the event of the petitioner surrenders before that court and file an application to recall the warrant or for regular bail, or both, the same shall Crl.M.C.No.3190 of 2013 :-3-: be considered on merit and pass appropriate orders thereon, on the date of his surrender itself. V.K.MOHANAN, JUDGE skj True copy P.A. to Judge