

Benny Vs. State of Kerala

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Court : Kerala

Decided On : Jul-10-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Benny

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN WEDNESDAY,THE 10TH DAY OF JULY 2013 19TH ASHADHA, 1935 CrI.MC.No. 2826 of 2013 () ----- CC 862/2011 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, KOTTARAKKARA CRIME NO. 370/2004 OF CHADAYAMANAGALAM POLICE STATION, KOLLAM PETITIONER(S)/8TH ACCUSED: ----- BENNY, S/O.PHILIPPOSE AGED 3 YEARS VAZHAVILAVINODBHAVAN, AYROOR MURI EDAMULAKKAL VILLAGE, KOLLAM DISTRICT. BY ADVS.SRI.K.SIJU SRI.S.ABHILASH COMPLAINANT(S)/RESPONDENT: ----- STATE OF KERALA THROUGH THE SUB INSPECTOR OF POLICE CHADAYAMANGALAM POLICE STATION REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA. BY PUBLIC PROSECUTOR SMT. HYMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10-07-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 2826 of 2013 () APPENDIX PETITIONER(S)' EXHIBITS

----- ANNEXURE.1 - THE COPY OF FIR IN CRIME NO.370/2004 OF CHADAYAMANGALAM POLICE STATION ANNEXURE.2 - THE COPY OF FINAL REPORT IN CRIME NO.370/2004 OF CHADAYAMANGALAM POLICE STATION. ANNEXURE.3 - THE COPY OF JUDGMENT IN CC.NO.1189/2005 DATED 30-9-2011 RESPONDENT(S)' EXHIBITS ----- NIL // TRUE COPY // P.A. TO JUDGE sou. V.K.MOHANAN, J.

----- Crl.M.C. No. 2826 of 2013 ----- Dated this the 10th day of July, 2013 ORDER The petitioner is the 8th accused in Crime No.370/2004 of Chadayamangalam Police Station for the offences punishable under Sections 143, 147, 148, 451, 323, 324, 427 & 149 of IPC and the Court has taken cognizance upon the report filed therein and the case now pending as C.C.No862/2011. According to the petitioner his name was not mentioned in the FIR and he was not arrested during the crime stage and he is employed in Gulf and it is also the case of the petitioner that the other accused in the above crime who faced the trial got an acquittal as per Annexure-3. Now he apprehends that he will be arrested and send to jail in case he surrenders before the Court below since the case against him is refiled and now pending against him. Therefore, he preferred the above petition with prayer to direct the Court below to recall the warrant and to consider and dispose the bail of the petitioner on the date of his surrender itself.

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

3. From the facts stated above it appears that Crl.M.C. No. 2826 o

2. though the crime was registered as early as in 2004, the petitioner was not available for arrest him and therefore the case against the other accused was proceeded and coercive steps are pending against the petitioner. If that be so, according to me, this Court will not be justified in directing the Court below to recall the warrant since it is the powers vested upon the trial court. It is for the petitioner to convince the Court the reason to recall the warrant and to seek regular bail. In the result this M.C is disposed of relegating the petitioners to approach the Court of Judicial First Class Magistrate Court-II, Kottarakkara and if he is so advised, he

can surrender before that Court and seeks order to recall the warrant and also for the regular bail and accordingly there will be a direction to the learned Magistrate that in the event of the petitioner is surrender before that Court and moving such applications, the same shall be considered on merit and pass appropriate orders thereon, on the date of their surrender itself. V.K.MOHANAN, JUDGE AS

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