

Daniel Vs. State of Kerala

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Court : Kerala

Decided On : Jul-19-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Daniel

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN FRIDAY, THE 19TH DAY OF JULY 2013 28TH ASHADHA, 1935 CrI.MC.No. 2998 of 2013 () ----- AGAINST THE ORDER IN CMP 2964/2013 of JUDICIAL MAGISTRATE OF THE FIRST CLASS-II,PATHANAMTHITTA DATED 05 04-2013 CRIME NO. 148/2012 OF THANITHODE POLICE STATION , PATHANAMTHITTA PETITIONER/ACCUSED: ----- DANIEL, AGED 6 YEARS S/O.KURIEN PATHROSE, CHOONDAL VEEDU ELIMULLUMPLACKAL P.O., KONNI, PATHANAMTHITTA DISTRICT. BY ADV. SRI.C.B.SREEKUMAR RESPONDENT: ----- STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA ERNAKULAM (CRIME NO.94 OF 201.OF THANNITHODE POLICE STATION PATHANAMTHITTA DISTRICT

031. BY PUBLIC PROSECUTOR SMT. S. HYMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 19-07-2013, THE COURT ON THE

SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 2998 of 2013 ()

----- APPENDIX PETITIONER'S ANNEXURES

----- ANNEXURE-1:TRUE COPY OF THE DISCHARGE CARD ISSUED BY GENERAL HOSPITAL, PATHANAMTHITTA DATED 08 11.2012. ANNEXURE-2:TRUE COPY OF THE FIR IN CRIME NO.148 OF 201.OF THANNITHODE POLICE STATION DATED 11 11.2012. ANNEXURE-3:TRUE COPY OF THE ORDER IN C.M.P.NO.2964/2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PATHANAMTHITTA DATED 05 04.2013. ANNEXURE-4:TRUE COPY OF THE FIR IN CRIME NO.94 OF 201.DATED 03 05.2013 OF THANNITHODU POLICE STATION. ANNEXURE-5:TRUE COPY OF THE PETITION ALONG WITH AFFIDAVIT FILED BY WIFE OF THE PETITIONER BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, PATHANAMTHITTA DATED 25 6/2013. ANNEXURE-6:TRUE COPY OF THE DISCHARGE CERTIFICATE ISSUED FROM MGM MUTHOOT MEDICAL CENTRE DATED 18 06.2013. RESPONDENT'S ANNEXURES

----- //True copy// NIL P.A. TO JUDGE Shg/
V.K.MOHANAN, J.

----- CrI.M.C.No.2998 of 2013

----- Dated this the 19th day of July, 2013 ORDER

The petitioner is the sole accused in Crime No.94 of 2013 of Thannithode Police Station, where the offence involved is under Section 31(1) of the Protection of Women from Domestic Violence Act. According to the petitioner he was not aware of any proceedings pending in the Judicial First Class Magistrate Court-II, Pathanamthitta and he was not served with Annexure-3 ad interim order passed by the learned Magistrate. According to the petitioner, as NBW is pending against him, he apprehends that he will be sent to jail in case of his surrender before the court below. Therefore, he preferred the above M.C. with a prayer to direct the Judicial First Class Magistrate Court-II, Pathanamthitta to re-call the NBW issued against him.

2. Heard the learned counsel for the petitioner as well as the learned Public Prosecutor. CrI.M.C.No.2998 of 2013 :-2-:

3. If any legal proceeding issued from the court below is pending, it is for him to convince that court from where the proceeding is issued, the reason for his absence during previous proceedings and agitate about the non-service of Annexure-3 order, etc. It appears that the F.I.R. against the petitioner was registered on 03/05/2013 where the allegation is that he violated the order issued by the learned Magistrate probably Annexure-3 order i.e. dated 05/04/2013. In the absence of any material or evidence to believe that Annexure-3 was not served on the petitioner, this Court will not be justified in directing the court below to re-call the warrant issued against the petitioner by usurping the discretionary power of that court. Therefore, it is only just and proper to relegate the petitioner to approach that court and seek an order to re-call the NBW. In the result, this M.C. is disposed of relegating the petitioner to approach the court of Judicial First Class Magistrate Court-II, Pathanamthitta and he can surrender before the said court, if he is so advised, and seek orders to CrI.M.C.No.2998 of 2013 :-3-: 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 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

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