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Mustaff Vs. State of Kerala

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Court : Kerala

Decided On : Jul-26-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Mustaff

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN FRIDAY, THE 26TH DAY OF JULY 2013 4TH SRAVANA, 1935 Crl.MC.No. 3113 of 2013 () ---------- CMP NO. 1575/2013 IN CMP NO. 1009/2013 IN CRL.APPEAL NO. 40/2013 OF SESSIONS COURT, KALPETTA, WAYANAD ---------- PETITIONER/PETITIONER/APPELLANT : ---------- MUSTAFFA S/O. BHAVA, KUTHIRAPARAMBIL, MUNDERI KALPETTA P.O., WAYANAD DISTRICT. BY ADV. SRI.K.S.ARUN KUMAR RESPONDNET/COMPLAINANT : ---------- STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26-07-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Mn ...2/- Crl.MC.No. 3113 of 2013 () ---------- APPENDIX PETITIONERS' ANNEXURE : ---------- ANNEXURE I: CERTIFIED COPY OF THE ORDER

DATED 26 4.2013 CMP NO.1009/2013 IN CRL.APPEAL NO.40/2013 PASSED BY THE SESSIONS COURT, KALPETTA, WAYANAD. ANNEXURE II: CERTIFIED COPY OF THE ORDER DATED 5 7.2013 IN CMP NO.1575/2013 IN CRL.APPEAL NO.40/2013 PASSED BY THE SESSIONS COURT, KALPETTA. RESPONDENTS' EXHIBITS : NIL ---------- //TRUE COPY// P.A. TO JUDGE Mn V.K.MOHANAN, J.

---------- Crl.M.C.No. 3113 of 2013 ---------- Dated this the 26th day of July, 2013

ORDER

The petitioner is an accused in S.C.No.67/2003 of the Sessions Court, Sulthan Bathery. It appears that by the judgment dated 26/3/2013 in S.C.No.67/2003, the Court of Sessions Judge, Sulthan Bathery, convicted and sentenced the petitioner for the offence punishable under Section 55(a) of Abkari Act, challenging the same, the petitioner herein, preferred Crl.Appeal No.40/2013 before Sessions Court Kalpetta and when the above appeal come up for consideration in that Court, by order dated 26/4/2013 in CMP.No.1009/2013, the lower appellate court suspended the execution of sentence on condition that the appellant and two sureties executing a bond for Rs,40,000/- each within 20 days of the order before the trial court. Now the case of the petitioner is that he could not execute the bond within 20 days as he was suffering with fever and the trial Court close due to vacation and accordingly, the petitioner moved Crl.M.P.No.1575/2013 with a prayer for extension of time to execute the bond. But the learned Judge dismissed the same, holding that, alteration of condition in the Crl.M.C.No. 3113 o

2. order would amount to review, which is impermissible law. Therefore, it is prayed that time may be granted to execute the bond.

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

3. Having regard to the facts and circumstances involved in the case, according to me, it is only just and proper to grant one week time to the petitioner to execute the bond as per Annexure-I, order of lower appellate court particularly considering the fact that the lower appellate court was inclined to suspend the execution of

sentence. In the result, this M.C. Is disposed of granting 10 days time to the petitioner to execute the bond, ordered by the lower appellate court by Annexure-I order and the trial court is directed to permit the petitioner to execute the bond, if he approaches the court within 10 days from today treating the same as compliance of Annexure-I order, provided he comply with other conditions in the Annexure-I order. V.K.MOHANAN, JUDGE AS

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