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Sumesh Vs. State of Kerala

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Court : Kerala

Decided On : Jul-26-2013

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Sumesh

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. 3110 of 2013 ---------- CP 26/2012 of JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM PETITIONER/A6: SUMESH, AGED 3 YEARS S/O.DIVAKARAN, KULAPPALA VEEDU, NARATHU DESOM NARATH VILLAGE, KANNUR. BY ADVS.SRI.V.JOHN SEBASTIAN RALPH SMT.PREETHY KARUNAKARAN SMT.SANJANA R.NAIR RESPONDENT: STATE OF KERALA, REPRESENTED BY THE S.I. OF POLICE CHERANALLORE POLICE STATION (CR.NO.1918/2011) REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, COCHIN-31. R BY PUBLIC PROSECUTOR MR.RAJESH VIJAYAN THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26-07-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: V.K.MOHANAN, J.

---------- Crl.M.C.No. 3110 of 2013
---------- Dated this the 26th day of July, 2013

ORDER

The petitioner is the 6th accused in Crime No.1918/2011 of Chadayamangalam Police Station. According to the petitioner though the crime was registered during the year 2011, he was not arrested and no summons was served on him. Now he is ready to surrender before the Court below but he apprehends that he will be sent to jail as NBW is pending against him. Therefore, the present petition is filed under Section 482 of Cr.P.C., with a prayer to direct the court below to recall the warrant and to consider his application for bailon the date of his surrender.

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

3. Having regard to the facts and circumstances involved in the case it appears to me that the petitioner involved in a crime along with other accused wherein the offences alleged are under Sections 143, 147, 341, 365, 323, 337, 294(B), 395, 307 and 427 r/w Section 149 of IPC. It can Crl.M.C.No. 3110 o

2. be seen that the Police, on completing the investigation preferred the report based upon which the court took cognizance and now committal proceedings is instituted. No material is provided to show that the petitioner was available in station during proceedings, after the registration of the crime. If that be so, it is up to the petitioner to convince the Court the reasons for his absence and why he was not arrested etc. This court will not be justified in directing the Court to recall the warrant and stalling the legal proceedings initiated by the Court below to secure the presence of the petitioner. Therefore, it is only just and proper to relegate the petitioner to approach the Court of Judicial First Class Magistrate Court- II, Eranakulam where C.P.No.56/2012 is pending and to seek appropriate remedies. In the result, this M.C. is disposed of relegating the petitioner to approach the court of Judicial First Class Magistrate -II, Ernakulam 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 Crl.M.C.No. 3110 o

3. will be a direction to the learned Magistrate that, in the event of the petitioner surrender 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 AS

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