

C.Abbas Vs. State of Kerala

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Court : Kerala

Decided On : Jul-31-2013

Judge : Honourable Mr.Justice S.S.Satheesachandran

Appellant : C.Abbas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE S.S.SATHEESACHANDRAN WEDNESDAY, THE 31ST DAY OF JULY 2013 9TH SRAVANA, 1935 Bail Appl..No. 3247 of 2013 () ----- CRIME NO. 436/2013 OF NEELESHWAR POLICE STATION, KASARAGOD DISTRICT ----- PETITIONER/ ACCUSED NO 4 : ----- C.ABBAS, AGED 5 YEARS S/O LATE. C. KUNJIPAKKY "FAAZACASTEL" DOOR NO. 17-13-1089/21 K.M.C. MENS HOSTEL ROAD, NEAR FALNIR, MANGALORE 57500 BY ADV. SMT.CHINCY GOPAKUMAR RESPONDENT : ----- STATE OF KERALA, RERPESENTED BY THE PUBLIC PROSECUTOR HIGH CORUT OF KERALA, ERNAKULAM, KOCHI 68203 BY PUBLIC PROSECUTOR SMT. LALIZA T.Y. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31-07-2013, ALONG WITH BA. 3248/2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Mn S.S.SATHEESACHANDRAN,J.

===== B.A. No. 3247 & 3248 of 2013
===== Dated, this the 31st day of July, 2013 ORDER
The above applications have been filed by some among the accused in Crime
436/2013 of Neeleshwar Police Station, Kasaragod District seeking pre -arrest bail
under section 438 of the Code of Criminal Procedure. B.A.3247/2013 is by fourth
accused (A4), and B.A.3248/2013, by second and third accused (A2 and A3), both
of them together.

2. The above crime was registered on a complaint presented before the
magistrate, which was referred to police for investigation and report. Case of de
facto complainant in brief was that on false representation made by B.A.3247/2013
& 3248 o

2. fourth accused (A4) and also on his inducement he purchased two items of
properties, one situated at Mangalore and the other at Nileshtar, from first
accused who claimed to be the owner of those properties. Fourth accused had
demanded for joining him also as a purchaser in the sale deed though the entire
consideration for sale was from de facto complainant. Accused No.4 was also
shown as a joint purchaser of the properties with the de facto complainant.
However, later only the complainant realised that first accused through his power
of attorney, second accused, had disposed the property to third accused. That
sale had taken place four years prior to the execution of the sale deed in favour of
de facto complainant. Raising such allegations he filed the complaint, and it has
given rise to the crime referred to above, which is now under investigation.

3. Learned counsel for petitioners submits that even on the allegations set out, no
offence could be imputed against second and third accused, the B.A.3247/2013 &
3248 o

3. former, power of attorney holder of first accused and the latter, purchaser of the
property through the power of attorney holder of first accused. Accused No.2 and
3 (petitioners in B.A.3248/2013) are prepared to co-operate with the investigation
of crime is the further submission of counsel to urge for granting them anticipatory
bail. So far as accused No.4 (petitioner in B.A.3247/2013) it is submitted by
counsel that his arrest and custodial interrogation is not necessary for completing

investigation.

4. Case Diary has been produced for my perusal. After looking into the materials so far collected by investigating agency with reference to the complaint of de facto complainant and also the submissions made by counsel on both sides, I find the discretionary relief canvassed by second and third accused (petitioners in B.A.3248/2013) stand on a different footing from that of petitioner in B.A.3247/2013 (fourth accused.) There is force in the submission made by counsel that on the B.A.3247/2013 & 3248 o

4. allegations raised accused 2 and 3 are not liable to be prosecuted for the offences imputed. I make it clear that the above observation has been made only for the purpose of disposal of this petition, and it shall not have any bearing on the opinion to be formed by investigating officer after investigation of crime. In the given facts of the case, I find petitioners 2 and 3 are entitled to pre arrest bail. So far as the fourth accused is concerned, on the facts presented, I find there is reason to suspect his complicity in the offence of cheating and defrauding of de facto complainant and as such he is not entitled to pre-arrest bail.

5. B.A.3248/2013 moved by accused 2 and 3 in the crime is allowed subject to the following directions. Petitioners in B.A.3248/2013 (A2 and A3) in the crime shall co-operate with the investigation of the crime and if their presence is demanded by investigating officer, they shall report before him without fail. In the event of arrest of any of B.A.3247/2013 & 3248 o

5. the above two petitioners (A2 and A3) in connection with the above crime he shall be released on bail on executing a bond for Rs.10,000/- each with one solvent surety for the like sum. B.A.No.3247/2013 filed by fourth accused (A4) is dismissed. S.S.SATHEESACHANDRAN JUDGE tp/-

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