

Roshini Vs. State of Kerala and Another

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Court : Kerala

Decided On : Oct-25-2013

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Roshini

Respondent : State of Kerala and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 25^H DAY OF OCTOBER 2013 3RD KARTHIKA, 1935 CrI.MC.No. 459 of 2011
----- AGAINST THE

ORDER

IN CMP12462/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, PARAVOOR DATED 2001-2011 CRIME NO. 1301/2010 OF PARAVOOR POLICE STATION , KOLLAM PETITIONER/PETITIONER IN CMP NO.12462/2010:

----- ROSHINI,
AGED 22 YEARS, D/O. SANAL KUMAR RESIDING AT SANTHA NIVAS, KANNAMANGALAM NORTH CHETTIKULANGARA, MAVELIKKARA ALAPPUZHA DISTRICT. BY ADV. SRI.C.RAJENDRAN RESPONDENTS/STATE & PETITIONER IN CMP NO.12371/2010:

1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH

COURT OF KERALA, ERNAKULAM.

2. JOY,AGED46YEARS, KORATTU CHERRY, MANJAL VEEDU, MUKUMNDAPURAM TALUK R1 BY PUBLIC PROSECUTOR SRI. RAJESH VIJAYAN R2 BY ADV. SRI.G.BHAGAVAT SINGH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON2510-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 459 of 2011 APPENDIX PETITIONER'S ANNEXURES ----- A1 : COPY OF THE PRIVATE COMPLAINT DATED411.2010 A2 : COPY OF THE INTERIM CUSTODY APPLICATION DATED1512.2010 A3 : COPY OF THE

ORDER
OF PARAVUR MAGISTRATE COURT

ORDER
DATED201.2011 RESPONDENTS' ANNEXURES -----
NIL //True copy// P.A. TO JUDGE Shg/ K. RAMAKRISHNAN, J.

----- CrI.M.C. No.459 of 2011 ===== Dated this
the 25th day of October 2013

ORDER

----- This CrI.M.C. is filed by the defacto complainant in crime No.1301/2010 of Paravur Police Station to quash the common order passed in C.M.P.Nos.12371/2010 & 12462/2010 on the file of the Judicial First Class Magistrate Court, Paravur under Section 482 of the Criminal Procedure Code.

2. The case of the petitioner in the petition was that she filed a private complaint against one Deepak Raj, Raju and the present 2nd respondent as accused Nos.1 to 3 alleging that they have forged her signature and created transfer document in respect of a motor car with No.KL- 31A-3672 and thereby they have committed the offence punishable under Sections 468, 471 read with Section 34 of Indian Penal Code. The forged documents were produced before the Regional Transport office, Mavelikkara CrI.M.C. No.459 of 2011 -2- for effecting the transfer as genuine documents. The complaint was forwarded to the police for investigation under

Section 156 (3) of Criminal Procedure Code and the police had registered a case as crime No.1301/2010 of Paravur police station and investigation is in progress. In the meantime on the basis of the search warrant issued, the vehicle was seized from the possession of the 2nd respondent, who is the 3rd accused in the case and it was produced before the court. Thereafter the petitioner preferred C.M.P.12462/2010 and 2nd respondent filed C.M.P. No.12371/2010 before the Judicial First Class Magistrate Court, Paravur for interim custody of the vehicle under Section 451 of the Code of Criminal Procedure and after hearing both sides and considering the documents produced, the learned Magistrate by the impugned common order dismissed the application filed by the petitioner and allowed the application filed by the 2nd respondent and ordered interim custody of the vehicle in favour of the 2nd respondent on executing a bond for Rs.2,00,000/- with Crl.M.C. No.459 of 2011 -3- two solvent sureties and also with condition that he shall surrender the vehicle as and when required and not to transfer the vehicle nor commit anything so as to reduce its value. This order is being challenged before this court under Section 482 of the Code of Criminal Procedure.

3. Heard the counsel for the petitioner, learned Public Prosecutor and counsel for the 2nd respondent.

4. The counsel for the petitioner submitted that she was the original registered owner and the vehicle was transferred in the name of the 2nd respondent by using forged documents and as such 2nd respondent cannot be said to be a person entitled to possess the vehicle as provided under Section 451 of the Criminal Procedure Code for interim custody. Further there is a possibility of the vehicle being misused or transferred by the 2nd respondent if he is allowed to keep the vehicle and the petitioner will loose the vehicle itself for no fault of hers if ultimately she succeeds in the prosecution. Further the lower court ought to have granted custody of the vehicle to the petitioner as Crl.M.C. No.459 of 2011 -4- she being the original owner of the vehicle and the vehicle was kept out of her possession by illegal means. So he prayed for setting aside the order and interim custody of the vehicle. The counsel for the petitioner also submitted that there were some observations made in the order that the signatures found in the transfer application alleged to have been filed before the authorities were identical with that of the

petitioner that may cause prejudice to his client in a later stage because that is the matter to be investigated by the investigating agency by comparing signature by a handwriting expert.

5. On the other hand the counsel for the 2nd respondent submitted that this is being an interlocutory order passed by the Magistrate there is no ground made out for warranting interference at the hands of this court invoking Section 482 of the Code of Criminal Procedure. The learned Magistrate have considered all the documents and correctly come to the conclusion that the 2nd respondent is entitled to keep interim custody of the Crl.M.C. No.459 of 2011 -5- vehicle during the pendency of the proceedings. The learned Public Prosecutor submitted that steps have been taken for sending the signature for expert opinion and investigation is still in progress.

6. I have considered the rival contentions of both parties.

7. Really it is an order passed by the learned Magistrate under Section 451 of Code of Criminal Procedure regarding the interim custody of the vehicle seized from the possession of the 2nd petitioner herein. The question whether the alleged offence of forgery or using a forged document as genuine document for obtaining transfer of the vehicle from the name of the petitioner to the name of the 2nd respondent etc. are matters to be considered in detail at the time of trial. Admittedly the vehicle is now transferred in the name of the 2nd respondent as per the records of the motor vehicles department. So he alone can now use the vehicle at present. Further under Section 451 of Code of Criminal Procedure, Court is not Crl.M.C. No.459 of 2011 -6- considering the ownership of the vehicle, but only considering the question as to who is the best person to keep the vehicle during the trial. Being a person in whose name the vehicle now stands is no doubt is the person entitled to keep possession during the pendency of the investigation and trial of the case. Further the Magistrate has taken into consideration all the aspects and also to protect the interest of the petitioner, made necessary conditions in the bond to be executed by the 2nd respondent for getting interim custody of the vehicle. That will remove the apprehensions of the counsel for the petitioner raised before this court regarding the safety of the vehicle. He cannot

transfer the vehicle and he cannot do anything to reduce its value as well. He is bound to produce the vehicle before the court as and when required by the court as well. If he commits any breach of that condition, then the court below is entitled to proceed against him as provided under law for enforcing the bond amount to be recovered from him. So no prejudice will be caused to the petitioner if this CrI.M.C. No.459 of 2011 -7- order is allowed to stand till the disposal of the case.

8. It is seen from the order that the learned Magistrate had verified the documents produced on the side of the 2nd respondent and made an observation that the signature seen in the disputed documents found to be identical that of the petitioner before this court. This is only an observation made by the Magistrate for the purpose of considering the application and it cannot be treated as final finding regarding the genuineness of the signature found in the document which has to be decided by the Magistrate on the basis of the evidence to be produced by the investigating agency at the later stage during trial. I make it clear that this observation will not stand in the way of the Magistrate who is trying the case later to decide the question of forgery alleged in the case. So I do not find any reason to interfere with the order passed by the Magistrate invoking power under section 482 of Code of Criminal Procedure as no illegality has been committed by the Magistrate in exercising the discretionary power under CrI.M.C. No.459 of 2011 -8- Section 451 of the Code of Criminal Procedure.

9. With the above observation, the petition is disposed of. The learned Magistrate is directed to expedite the trial of the case if the investigation agency has filed final report before that court. Communicate the order to the concerned Magistrate at the earliest. Sd/- K.RAMAKRISHNAN, JUDGE Shg/

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