

ismayil Vs. State of Kerala

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Court : Kerala

Decided On : Dec-18-2013

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : ismayil

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN WEDNESDAY, THE 18TH DAY OF DECEMBER 2013 27TH AGRAHAYANA, 1935 Bail Appl..No. 8428 of 2013 (C) ----- [CRIME NO. 969/2013 OF TANUR POLICE STATION] PETITIONER/ACCUSED: ----- ISMAYIL, AGED 22 S/O. THAJUDHEEN, ALIHAJIMTE PURAKKAL HOUSE, UNNYAL. BY ADVS. SRI.K.SUBASH CHANDRA BOSE, SRI.K.THAVAMONY, SMT.REMYA REGHUPAL. RESPONDENT/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT. P. MAYA. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18-12-2013, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Prv. P.BHAVADASAN, J.

----- B.A. No. 8428 of 2013 -----

----- Dated this the 18th day of December, 2013

ORDER

The petitioner is the sole accused in Crime No. 969 of 2013 of Tanur Police Station who is alleged to have committed the offence punishable under Sections 376 of IPC.

2. The allegation against the petitioner is that he, after having gained close acquaintance with the victim and after having promised the victim that he would marry her and made her believe so, had forced her to have sexual intercourse. The marriage proposal brought for the victim was aborted due to the intervention of the petitioner. It is further alleged that as a result of the relationship between the victim and the petitioner, the victim conceived. Thereafter, the petitioner made himself scarce.

3. The petitioner would say that he is innocent and has been falsely implicated. According to him, he has not committed any act which would constitute an offence. It is B.A. No. 8428/2013 -2- further claimed that if at all there was any physical relationship between the two persons, it was with the full consent and willingness of the victim and the offence under Section 376 of IPC cannot be attracted. The other contention taken is that the petitioner has been in custody from 13.11.2013 onwards and his continued custody is unnecessary.

4. The learned Public Prosecutor strongly opposed the petition and pointed out that the petitioner had pretended love and had given a false promise of marriage and had induced and forced a helpless girl to sexual intercourse and thereafter, deserted her. The acts committed by the petitioner is of serious nature. It is further pointed out that the investigation is at an infant stage.

5. After having heard the learned counsel for the petitioner and the learned Public Prosecutor and having perused the records, there seems to be considerable force in the submissions made by the learned Public Prosecutor. B.A. No. 8428/2013 -3- True, the records reveal that the victim as well as the petitioner had fallen in love. However, there is the allegation that the petitioner promised to marry her and forced her to sex with him. It is also true that the said act was committed

subsequently also. But there is an allegation that the marriage proposal which was brought for the victim was got aborted by the petitioner seems very serious. Further allegation is that as a result of the relationship, the victim had conceived. When that became known to parents of the victim and also others, the petitioner made himself scarce leaving the victim to her destiny. Under these circumstances, the claim of the petitioner that he is innocent and has been falsely implicated cannot be accepted. He has induced the girl to have sex with him and thereafter betrayed her. Further, the investigation is still going on. Considering the totality of the facts and circumstances, it is felt that this is not a fit case where extraordinary jurisdiction of this Court needs to be exercised in favour of B.A. No. 8428/2013 -4- the petitioner. The petition is accordingly dismissed. P.BHAVADASAN JUDGE ds

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