

Sumesh Vs. the State of Kerala

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Court : Kerala

Decided On : Jan-23-2014

Judge : Honourable Mr.Justice P.Bhavadasan

Appellant : Sumesh

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.BHAVADASAN THURSDAY, THE 23D DAY OF JANUARY 2014 3RD MAGHA, 1935 Bail Appl..No. 8549 of 2013 (E) ----- [CRIME NO. 2059/2013 OF CHERTHALA POLICE STATION , ALAPPUZHA] ----- PETITIONERS/ACCUSED 1 AND 2 ----- 1. SUMESH, AGED 28 YEARS, S/O PADMANABHAN, KOLLAPALLIVELIYIL HOUSE, KALAVAMKODAM P.O., CHERTHALA.

2. SHIBU, AGED 34 YEARS, S/O PADMANABHAN, KOLLAPALLIVELIYIL HOUSE, KALAVAMKODAM P.O., CHERTHALA. BY ADVS.SRI.K.M.FIROZ, SMT.M.SHAJNA, SRI.S.KANNAN. RESPONDENTS/STATE: ----- 1. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. THE SUB INSPECTOR OF POLICE, CHERTHALA POLICE STATION, ALAPPUZHA-688 001. BY PUBLIC PROSECUTOR SRI. DHANESH MATHEW MANJOORAN. THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 2301-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Prv. P.BHAVADASAN, J.

----- B.A. No.8549 of 2013 -----

--- Dated this the 23rd day of January, 2014

ORDER

Petitioners are accused Nos. 1 and 2 who were initially alleged to have committed offences punishable under Sections 323, 354 and 495 read with Section 34 of IPC. Later, Sections were altered and the petitioner now stands accused for the offences punishable under Sections 323, 354 and 498A read with Section 34 of IPC.

2. The marriage between the first petitioner and the complainant took place years back and it is alleged that thereafter, they fell apart and the first petitioner did not thereafter, take care of the defacto complainant and he wants to get rid of her. They had a child in that wedlock. The FIS produced would show the life led by the couple and the conflicts between them. Further allegation is that on 19.11.2013, while the victim was in the house of the first petitioner, the second petitioner came there and B.A. No.8549/2013 -2- misbehaved with her and tried to outrage her modesty.

3. Petitioners would say that the allegations are totally false and are made with ulterior motive. It was under the mistaken impression that the defacto complainant had laid the complaint accusing that the first petitioner had married a lady which in fact was not so. He had gone for treatment and had to remain in the hospital and that was mistaken as that he had married another lady and started living with her. It is further pointed out that in order to wreak vengeance, a false allegation has been made against the second accused also. It is further pointed out that the documents produced along with the petition would clearly show that she had close association with the Police Officers and if as a matter of fact, the incident alleged

on 19.11.2013 had actually taken place, nothing prevented the defacto complainant from informing the matter before the Police and she did not have to wait till 24.11.2013. The delay in lodging the complaint speaks volumes about the hollowness B.A. No.8549/2013 -3- of the complaint. Petitioners seek pre-arrest bail.

4. The learned Public Prosecutor opposed the petition as far as the second petitioner is concerned. It is pointed out by him that as far as the second petitioner is concerned, there are definite allegations attracting the offence under Section 354 of IPC. He stands on a different footing.

5. After having heard the learned counsel for the petitioners 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. As far as accused No.1 is concerned, the allegation is that he had married again he was keeping the defacto complainant away from him. As far as the second petitioner is concerned, there are definite allegations of having misbehaved with the victim. Whether the allegations are true or not, this is not a matter to be considered at this point of time. B.A. No.8549/2013 -4- Considering the facts and circumstances of the case, this petition is disposed of as follows: The petition is allowed as far as the first petitioner is concerned on the following conditions:

1. The first petitioner shall surrender before the Investigating Officer on or before 30.01.2014, who, after interrogation, shall produce him before the JFCM court concerned, which court, on an application for bail being moved by the petitioner shall release him on bail on his executing a bond for a sum of `15,000/- (Rupees Fifteen Thousand only) with two solvent sureties for the like sum each to the satisfaction of the said court. 2) The court shall ensure the identity of the sureties and the veracity of the tax receipts, before granting bail. 3) The petitioner shall appear before the Investigating Officer on every Wednesday between 9.00 am and 10.00 am until further orders. 4) The petitioner shall not tamper or attempt to tamper with the evidence and influence or try to influence the witnesses. B.A. No.8549/2013 -5- 5) If any of the conditions is violated, bail granted to the petitioner shall stand cancelled and the court concerned may take such steps as

are available to it in accordance with law. The petition is dismissed as far as the second petitioner is concerned. However, if so advised, the second petitioner may surrender before the Investigating Officer on or before 30.01.2014, who after interrogation, shall produce him before the JFCM Court concerned. If the second petitioner moves an application for bail before the said court, the learned Magistrate shall consider and pass appropriate orders thereon in accordance with law, preferably on the date of surrender itself. P.BHAVADASAN JUDGE ds

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