

Bineesh Thomas Vs. State of Kerala

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Court : Kerala

Decided On : Feb-05-2014

Judge : Honourable Mr. Justice P.D.Rajan

Appellant : Bineesh Thomas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.D.RAJAN WEDNESDAY, THE 5TH DAY OF FEBRUARY 2014 16TH MAGHA, 1935 CrI.MC.No. 165 of 2013 ()
----- CC.NO. 717/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, KANNUR -----
PETITIONER/ACCUSED: ----- BINEESH THOMAS, AGED 35 YEARS, S/O.C.M.THOMAS, NO.96, 5TH CROSS, SYAMANNA LAYOUT, ARAVIND NAGARA, BANASVADI, BANGALORE - 560 084. BY ADV. SRI.KODOTH SREEDHARAN RESPONDENT/COMPLAINANT :
----- 1. STATE OF KERALA, THOUGH THE STATION HOUSE OFFICER, VALAPATTANAM, REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. *ADDL.R2 IMPEADED *ADDL.R2: AYANIKKAL JOSE, S/O.KOCHUPOULO, AGED 59 YEARS, R/AT AYANIKKAL HOUSE, CHIRAKKAL, PUZHATHI, KANNUR DISTRICT. *ADDL.R2 IMPEADED AS PER
ORDER

DATED1001/2013 IN CRL.M.A.NO.414/2013 R1 BY PUBLIC PROSECUTOR SMT. BINDU GOPINATH ADDL.R2 BY ADV. SRI.ANEESH JOSEPH THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON0502-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts Crl.MC.No. 165 of 2013 APPENDIX PETITIONER(S) ANNEXURES: ANNEXURE -I: TRUE COPY OF THE COMPLAINT DATED1610/2009 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT- II, KANNUR. ANNEXURE II: TRUE COPY OF THE CERTIFICATE ISSUED BY THE REGISTRAR OF COMPANIES. ANNEXURE III: TRUE COPY OF THE CERTIFICATE ISSUED BY THE REGISTRAR OF COMPANIES. ANNEXURE IV: TRUE COPY OF THE HINDU DAILY DATED1810/2007. ANNEXURE V: TRUE COPY OF THE

ORDER

IN CRL.P.NO.4275 OF 2012 DATED238/2012 BY THE HIGH COURT OF KARNATAKA ANNEXURE VI: TRUE COPY OF THE COMPLAINT BEFORE THE BANGALORE POLICE IN CRIME NO.214/08. RESPONDENTS' ANNEXURES: NIL /TRUE COPY/ P.S.TO.JUDGE sts P.D.RAJAN, J
Crl.M.C.No.165 of 2013 Dated 5th February, 2014

ORDER

This Crl.M.C is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.825 of 2009 of Valapattanam Police Station which was registered under Section 420 read with 34 IPC.

2. The above case was filed by the second respondent alleging that the petitioner in the above case made a publication on 29.1.2007 in National Dailies like Malayala Manorama and other newspapers that there are several job vacancies for Nurses in Germany, Switzerland and other European countries. Second respondent's daughter who was working in Dubai, attracted by the above publication, contacted the petitioner and other accused for getting a chance. Accordingly, the petitioner conducted an interview and informed them to meet at Kannur. Second respondent visited the petitioner's house and informed the petitioner that there are several vacancies at Germany and they have to study german Crl.m.c.165/13 2 language and for that a sum of Rs.13,00,000/- is

necessary. Second respondent agreed to this and paid a sum of Rs.10,00,000/-. But petitioner failed to comply with the promise. In such circumstances, Annexure I complaint was filed before Judicial First Class Magistrate Court II, Kannur. Police, after investigation, laid final report. Hence petitioner who is the first accused in the above case has approached this court to quash the above proceedings.

3. Heard both sides. Learned counsel for the petitioner contended that the petitioner was not Director of the Company on the date of the alleged incident and therefore arraying him as an accused in the capacity of Director of the company is unsustainable in law. Hence the petitioner prays to invoke the inherent powers of this court.

4. Learned Public Prosecutor strongly opposed the application and contended that the investigation of the case was conducted by Valapattanam S.I and final report was filed before the court. The accused in the above case CrI.m.c.165/13 3 were absconding and the case is included in the L.P Register as L.P.No.105 of 2012 on 29.9.2012. Learned Public Prosecutor submits that Prima facie case is made out against the accused and an interference at this stage will affect the credibility of the prosecution case and therefore the petition may not be entertained.

5. Now the point that arise for consideration is whether Annexure I can be quashed by invoking the jurisdiction under Section 482 Cr.P.C. The inherent powers of the High Court contemplated u/s 482 Cr.P.C has to be exercised only for the three purposes mentioned in the section. This power cannot be invoked naturally in a matter where it is covered by a specific provision of the code. Therefore it means that if the matter in question is not covered by any provision of the code, it comes into operation, for the three purposes mentioned in the section. Inherent jurisdiction to make such orders necessary to "give effect to any order" under this code or to prevent CrI.m.c.165/13 4 "abuse of the process" of any court or to secure "the ends of justice". Apex Court in Talab Haji Hussain V. Madhukar Purushotham Mondker (AIR 1958 SC376 held that the inherent power contemplated under Section 482 Cr.P.C has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the test specifically laid down in the section itself.

6. Annexure II is the Registration Certificate and Annexure III is Form 32 in respect of the company issued by the Registrar of Companies. In Annexure III, Registrar of Companies informed that Mr.Vineesh Thomas is not a Director of the Company from 14.8.2006 onwards. When he is not a Director, his accusation as first accused is unsustainable in law. It is submitted that if the Director resigns from office or withdraws from the company, no prosecution will lie against him after his withdrawal or resignation. Here the allegation was that on 29.1.2007, the company made publication in several newspapers and Crl.m.c.165/13 5 thereby committed the offence. If that be the position, the alleged incident had happened after withdrawal of the Directorship of the company, by the petitioner. The above position was dealt with by Apex Court in Anita Malhotra V. Apparel Export Promotion Council and another (2012(1) SCC520. Paragraphs 16 and 17 of the judgment reads thus:- "16. A reading of the above provisions makes it clear that there is a statutory requirement under Section 159 of the Companies Act that every company having a share capital shall have to file with the Registrar of Companies an annual return which includes details of the existing Directors. The provisions of the Companies Act require the annual return to be made available by a company for inspection (Section 163) as well as Section 610 which entitles any person to inspect documents kept by the Registrar of Companies. The High Court committed an error in ignoring Section 74 of the Evidence Act, 1872. Sub- section (1) of Section 74 refers to public documents and sub-section (2) provides that public documents include "public records kept in any State of private documents". A conjoint reading of Sections 159, 163 and 610(3) of the Companies Act, 1956 read with sub-section (2) of Section 74 of the Evidence Act, 1872 makes it clear that a certified copy of annual return is a public document and the contrary conclusion Crl.m.c.165/13 6 arrived at by the High Court cannot be sustained.

17. The annual return dated 30.9.1999 which provides the details about the existing Directors clearly shows that the appellant was not a Director at the relevant time. Had the High Court considered the contents of the certified copy of the annual return dated 30.9.1999 filed by the Company which clearly shows that the appellant herein(A3) has not been shown as Director of the Company, it could have quashed the criminal proceedings insofar as A3 is concerned".

7. Accepting the above principle, it is clear that since the petitioner was not a Director on the date of the alleged incident, the criminal proceedings against him in the capacity as Director will not sustain. But as the petitioner was absconding after the incident, the benefit of the Apex Court decision cannot be extended to him in this case. Petitioner is at liberty to approach the trial court with a fresh petition and raise all his contentions as per law. Crl.M.C is disposed of as above.
P.D.RAJAN, JUDGE lgk

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