

Sleebe Thomas Vs. State of Kerala

Sleebe Thomas Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1130933

Court : Kerala

Decided On : Feb-26-2014

Judge : Honourable Mr.Justice N.K.Balakrishnan

Appellant : Sleebe Thomas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE N.K.BALAKRISHNAN WEDNESDAY, THE 26TH DAY OF FEBRUARY 2014 7TH PHALGUNA, 1935 CrI.MC.No. 3000 of 2013 ()
----- AGAINST THE

ORDER

IN CrI.Rev.Pet 2645/2009 of HIGH COURT OF KERALA DATED 24-01-2012 AGAINST THE

ORDER

IN CMP 43782008 of J.M.F.C.-I (FOREST OFFENCES), TPA DATED 25-05-2013 CRIME NO. 121/2006 OF KARIMANNOOR POLICE STATION , IDUKKI PETITIONER(S)/PETITIONER/ACCUSED:

----- SLEEBA THOMAS @
SLEEBA.M.T, AGED 51 YEARS S/O.LATE THOMAS, MULLACKAL HOUSE, (MURIMATTATHIL) POOTHRIKA.P.O, PUTHENCROUZ, ERNAKULAM. BY ADV.

SRI.PAUL K.VARGHESE COMPLAINANT(S)/RESPONDENTS/COMPLAINANT:

----- 1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM.

2. SEENAMOL ABRAHAM,, AGED45YEARS D/O.ITTAN, KUNNAPPILLIL VEEDU, ASANPADIBHAGOM MULAPPURAMKARA, NEYYASSERI VILLAGE, THODUPUZHA TALUK IDUKKI DISTRICT. R2 BY ADVS. SRI.M.B.SANDEEP SMT.R.PRIYA SRI.V.VISAL AJAYAN SMT.B.DHANYA R1 BY PUBLIC PROSECUTOR SRI.RAJESH VIJAYAN THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON2602-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 3000 of 2013 () -----

APPENDIX PETITIONER(S)' EXHIBITS ----- ANNEXURE-I A TRUE COPY OF THE COMPLAINT FILED BY THE2D RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT,THODUPUZHA DATED217/2006 ANNEXURE-II A TRUE COPY OF THE FINAL REPORT IN CRIME NO12106 OF THE KARIMANOOR POLICE STATION DATED2511/2006 ANNEXURE-III A TRUE COPY OF THE DOCUMENT NO.3136/2006 F THE KARIKODE SRO DATED277/2006 ANNEXURE-IV A TRUE COPY OF THE AGREEMENT PREPARED BY ADVOCATE BIJU PARANILAYAM DATED277/2006 ANNEXURE-V A TRUE COPY OF THE STOP MEMO SUBMITTED BY SRI.PAULOSE TO THE FEDERAL BANK LTD.,KOLENCHERY BRANCH DATED287-2006 ANNEXURE-VI A TRUE COPY OF THE PLAINT IN O.S.NO.13/2007 OF THE SUB COURT, THODUPUZHA DATED231/2007 ANNEXURE-VII A TRUE COPY OF THE COMPLAINT IN CC.180/2009 FILED BY THE SRI.KURIAKOSE AGAINST THE PETITIONER'S BROTHER IN LAW SRI.KURIAKOSE BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE VADAKKANCHERRY DATED113/2009 ANNEXURE-VIII A TRUE COPY OF THE COMPLAINT FILED BY SRI.PAULOSE BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT THODUPUZHA DATED102-2010 ANNEXURE-IX A TRUE COPY OF THE

ORDER

OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THODUPUZHA IN
CMP.664/10 DATED 10-2-2012 ANNEXURE-X A TRUE COPY OF THE

JUDGMENT

IN CRL.RP.2645/2009 OF THE HONOURABLE HIGH COURT OF
KERALA, DATED 24-1-2012 ANNEXURE-XI A TRUE COPY OF THE MEDICAL
EXAMINATION CONDUCTED BY DR. MARY KUTTY JOSE THODUPUZHA
GOVT. TALUK HOSPITAL DATED 9-8-06 ANNEXURE-XII A TRUE COPY OF
THE 2D RESPONDENT BEFORE THE FAMILY COURT, THODUPUZHA
ANNEXURE-XIII A TRUE COPY OF THE

JUDGMENT

IN OP.207/06 OF THE FAMILY COURT, THODUPUZHA DATED 3-15-2011
ANNEXURE- XV A TRUE COPY OF THE

ORDER

IN CC.570/2013 OF THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, THODUPUZHA DATED 25-5-2013. CrI.MC.No. 3000 of 2013 () -2-
RESPONDENT(S)' EXHIBITS ----- NIL //TRUE COPY//
P.A. TO JUDGE JJJ N.K. BALAKRISHNAN, J.

----- CrI.M.C. No. 3000 of 2013
----- Dated this the 26th day of February, 2014

ORDER

Petitioner challenges Annexure XV Order passed by the Judicial First Class
Magistrate-I, Thodupuzha, as per which cognizance was taken against the
petitioner for offences under sections 420 and 323 of IPC.

2. Originally, the 2nd respondent filed Annexure I complaint before the learned
Judicial First Class Magistrate, Thodupuzha. Without noticing the bar under
section 198 of Cr.P.C., in respect of offences under sections 493, 494 and 495
mentioned in that complaint, it was forwarded to the Police for investigation under
section 156(3) of Cr.P.C. Final report Annexure II was filed alleging that the
accused committed offences under sections 493, 494, 495, 323, 420, 377 and 376

of IPC. Thereafter, the case was committed to CrI.M.C. No. 3000/2013 -2- the court of Session. At that stage the accused therein moved this court by filing Annexure X petition (CrI.R.P. No.2645/2009). This court, as per Annexure X Order dated 24.01.2012, allowed the Revision Petition and the act of the learned Magistrate in taking cognizance of the offences under sections 493, 494 and 495 along with offences under sections 323, 420, 377 and 376 on the police report was set aside and the committal order was quashed. But liberty was given to take cognizance of the offences under section 420 and 323 of IPC on the basis of the complaint, ignoring the final report.

3. Presumably thinking that complaint alone is sufficient even when the complainant was absent, the learned Magistrate passed Annexure XV order. It is stated therein that the petitioner (complainant) was absent and application was filed on his behalf. The relevant portion of CrI.M.C. No. 3000/2013 -3- that order reads: "Heard both sides. I am satisfied that prima facie case is made out only u/S. 420 and 323 IPC. The petitioners has alleged all offences relating marriage in this case. But all these offences are not made out as these offences are co related. Taking in account the order of the Hon'ble High Court also only S.420 and 323 IPC is made out. Hence taken on file as C.C. No.570/13, u/S.420 and 323 IPC. Issue summons to accused." [So many mistakes are seen in the Order] 4. The learned counsel for the petitioner submits that this Court, as per Annexure X order, only meant that the learned Magistrate can proceed on the original complaint. It does not mean that the learned Magistrate can straight away take cognizance without following the procedure prescribed under section 200 and the succeeding provisions of Cr.P.C. There is nothing in Annexure XV order to show CrI.M.C. No. 3000/2013 -4- that the complainant was examined and/or her witnesses were examined. The learned counsel submits that no such procedure was followed by the learned Magistrate.

5. According to the learned counsel, as it stands, what is available is only the original complaint and nothing more and so Annexure XV order is to be quashed. The procedure adopted by the learned Magistrate is illegal and unsustainable. The complaint is now before the learned Magistrate. In the light of the directions issued by this Court in CrI.R.P. 2645 of 2009 dated 24.01.2012, the learned Magistrate

should not have taken cognizance simply on the basis of the complaint. The learned Magistrate shall proceed as required under Chapter XV of the Code.

6. In the result, this Criminal M.C. is disposed of as stated below: CrI.M.C. No. 3000/2013 -5- The cognizance taken by the learned Magistrate is set aside. The matter is remanded to the learned Magistrate to follow the procedure prescribed under Chapter XV of Cr.P.C. The complainant will appear before the learned Magistrate on 21.03.2014. He will produce witnesses also on that date or on a day fixed by the learned Magistrate. The learned Magistrate will record their statements and proceed in accordance with law. Sd/- N.K. BALAKRISHNAN, JUDGE //True Copy// P.A. to judge jjj

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com