

Babu Vs. State of Kerala

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Court : Kerala

Decided On : Feb-14-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Babu

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 14TH DAY OF FEBRUARY 2014 25TH MAGHA, 1935 CrI.MC.No. 1036 of 2014 ()
----- AGAINST THE

ORDER

T IN BAIL APPLICATION NO. 8307/2013 of HIGH COURT OF KERALA DATED 16-12-2013 CRIME NO. 76/2012 OF THIRUPURAM EXCISE RANGE OFFICE , THIRUVANANDAPURAM PETITIONER(S)/ACCUSED:
----- BABU, AGED 44 YEARS S/O.SUKUMARAN, KAILAS BHAVANAM, THANNIMMOODU.P.O. ATHIYANNOOR VILLAGE, NEYYATTINKARA THIRUVANANTHAPURAM DISTRICT. BY ADV. SRI.T.RAVIKUMAR COMPLAINANT(S)/RESPONDENTS:
----- 1. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM. 682 031.

2. THE DEPUTY EXCISE COMMISSIONER THIRUVANANTHAPURAM.695 001.
3. THE JOINT EXCISE COMMISSIONER SOUTHERN RANGE, THIRUVANANTHAPURAM.695 001.
4. THE ASSISTANT EXCISE COMMISSIONER (ENFORCEMENT), THIRUVANANTHAPURAM. (CRIME NO.76/2012 EXCISE RANGE OFFICE, THIRUPURAM). 695 124.
5. THE EXCISE INSPECTOR EXCISE RANGE OFFICE, THIRUPURAM. 695 124. BY PUBLIC PROSECUTOR SMT.S.HYMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON1402-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 1036 of 2014 ()
----- APPENDIX PETITIONER(S)' EXHIBITS -----
ANNEXURE1 TRUE COPY OF THE REPORT OF R5 DT. 15.11.2012.
ANNEXURE2 TRUE COPY OF THE

ORDER

NO.T7-100/2012 DT. 14.11.2012 ISSUED BY R2. ANNEXURE3 TRUE COPY OF THE REPORT FILED BY R4 ALONG WITH THE ARREST MAHAZAR PREPARED BY THE SPECIAL SQUAD CIRCLE INSPECTOR ON85.2013. ANNEXURE4 TRUE COPY OF THE REPORT FILED BY3D RESPONDENT IN CRIME NO.76/2012 OF EXCISE RANGE OFFICE, THIRUPURAM DT. 29TH JUNE, 2013. ANNEXURE5 TRUE COPY OF THE REPORT DT. 22.6.2013. ANNEXURE6 TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE HON'BLE MINISTER OF EXCISE DT. 10.9.2013. ANNEXURE7 TRUE COPY OF THE NOTICE DT. 13.12.2013. ANNEXURE8 TRUE COPY OF THE LOOK OUT NOTICE IN KERALA KOUMUDI DT. 25TH JANUARY, 2014. ANNEXURE9 TRUE COPY OF THE

ORDER

IN BAIL APPLICATION NO.8307/2013 DT. 16.12.2013. RESPONDENT(S)' EXHIBITS: NIL //TRUE COPY// P.A. TO JUDGE. dlk K. RAMAKRISHNAN, J.

ORDER

This is an application filed by the petitioner to quash the proceedings in Crime No.76/2012 of Thirupuram Excise Range as against him under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is shown as accused No.7 in Crime No.76/2012 of Thirupuram Excise Range alleging the offences under Sections 55(a) and 67(B) of the Abkari Act. There is no allegation that the petitioner transported or possessed any liquor. The only allegation was that the petitioner provided some money to one of the accused persons and that accused person deposited the same in the account of another person. The petitioner filed B.A.No.8307/13 and this Court by order dated 16.12. 2013 directed the petitioner to surrender before the authorities concerned and further directed that the petitioner shall be produced before the jurisdictional magistrate as early as possible. The petitioner is being harassed by the excise officials. So, he approached the CrI.M.C.No.1036 of 2014 2 Excise Minister with a petition to exonerate him from the charge sheet. The petitioner was directed to appear before the Joint Excise Commissioner, Southern Range, Thiruvananthapuram on 20.12.13. Accordingly, he appeared and his statement was recorded and he was not arrested. Thereafter, he was under the impression that the charge sheet against him had been dropped. But to the surprise of the petitioner, a look out notice was published by the Assistant Excise Commissioner (Enforcement), Thiruvananthauram, in Kerala Koumudi daily dated 25.1.2014. So he has no other option, but to approach this Court by filing this petition under Section 482 of the Code of Criminal Procedure seeking the following relief: "For these and other reasons to be stated at the time of hearing, it is prayed that this Hon'ble Court may be pleased to call for the records leading to Annexure-5 in Crime No.76/2012 of Excise Range Officer, Thirupuram, pending before the Hon'ble Judicial First Class Magistrate Court- II, Neyyattinkara and quash the same, the same being an abuse of process of Court and amounts to unnecessary harassment of the petitioner".

3. Heard the counsel for the petitioner and the learned Public Prosecutor.

4. The 4th respondent has filed a statement regarding the Crl.M.C.No.1036 of 2014 3 progress of the investigation. It is stated in the report that since the petitioner has not complied with the direction of the this Court and not appeared before the investigating officer, they have issued a look out notice. Further, the investigation is still in progress in connection with his involvement in the transaction, which has to be investigated in detail. The counsel for the petitioner submitted that no offence has been made out on the basis of those allegations.

5. It is an admitted fact that a crime has been registered by the Excise Inspector, Thirupuram as Crime No.76/12 when they intercepted a vehicle with spirit. During the investigation, according to the prosecution, it was revealed that the petitioner is also involved in the transaction and he has financed for the transaction. It is on that basis that he has been implicated in the case as the 7th accused. Further, it is also seen from the records that the present petitioner had filed an anticipatory bail application before this Court as B.A.No.8307/2013 and this Court by Annexure-9 order disposed of that application directing the petitioner to surrender before the officer investigating the crime and if he surrenders before the investigating officer and if he is arrested, he shall be produced after interrogation before Crl.M.C.No.1036 of 2014 4 the jurisdictional magistrate as early as possible. But, according to the petitioner, he appeared before the Joint Excise Commissioner and his statement was recorded. But, that was not the direction in the bail order. It is also mentioned in the report submitted by the Public Prosecutor through the investigating officer that petitioner's involvement in the case can be brought out only on questioning him, for which his presence is required. Since he has not appeared as directed by this Court before the Investigating Officer, to procure his presence, look out notice has been issued. So, considering the circumstances, I feel that it is not a fit case to invoke Section 482 of the Code of Criminal Procedure at this stage to quash the proceedings in Crime No.76/2012 of Excise Range, Thirupuram as against the petitioner as investigation is still in progress and the petitioner's role in the commission of the crime could be traced out only by interrogating him and that was the reason for this Court while disposing the anticipatory bail application directed the petitioner to surrender before the

investigating officer to enable the investigating officer to interrogate him and if he is satisfied about his involvement and if he is arrested, produce him before the Magistrate concerned as early as Crl.M.C.No.1036 of 2014 5 possible. This condition has not been complied with by the petitioner. Issuing look out notice under this circumstance to procure the presence of the petitioner cannot be said to be unreasonable at this stage. He can very well surrender before the investigating officer as directed in Annexure-9 order and co-operate with the investigation and if the investigating officer feels that his arrest is required, he is at liberty to arrest the petitioner and produce him before the Magistrate concerned as early as possible as directed in Annexure-9 order. If his presence is procured on his surrender, they are directed to withdraw the look out notice as the look out notice is intended only to procure the presence of the person alone. With the above observations and directions, this petition is disposed of. Hand over a copy of this order to the Public Prosecutor as well as the counsel for the petitioner. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ PS to Judge Crl.M.C.No.1036 of 2014 6

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