

Renuka Vasanth Vs. the State of Kerala

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Court : Kerala

Decided On : Feb-20-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Renuka Vasanth

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 20TH DAY OF FEBRUARY 2014 1ST PHALGUNA, 1935 CrI.MC.No. 1024 of 2014 ()
----- CRIME NO. 1188/2013 OF MUSEUM POLICE STATION, THIRUVANANTHAPURAM ----- PETITIONER / ACCUSED :
----- RENUKA VASANTH, AGED 53 YEARS W/O.P.VASANTH, DOOR NO.13, 1ST STREET KLASTERS ESTATE, NEELANKARAI, CHENNAI 41 BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR SRI.V.S.THOSHIN RESPONDENTS/STATE/COMPLAINANT :
----- 1. THE STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, COCHIN - 31.

2. SUB INSPECTOR OF POLICE MUSEUM POLICE STATION, THIRUVANANTHAPURAM - 695 001. R1 & R2 BY PUBLIC PROSECUTOR SMT. S. HYMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION

ON2002-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
Mn ...2/- CrI.MC.No. 1024 of 2014 () ----- APPENDIX
PETITIONER(S)' ANNEXURES : ----- ANNEXURE
A. COPY OF THE FINAL REPORT IN CC79013 PENDING ON THE FILE OF
CHIEF JUDICIAL MAGISTRATE COURT, THIRUVANANTHAPURAM.
ANNEXURE B. COPY OF THE

ORDER

DATED249.13 IN BA NO.5922 OF 2013 PASSED BY THIS HON'BLE COURT.
ANNEXURE C. COPY OF THE RENEWED VISA OF THE PETITIONER WITH
DATE OF EXPIRY AS61.2015. ANNEXURE D. COPY OF THE MARRIAGE
CERTIFICATE BETWEEN THE PETITIONER AND VASANTH MARAR
DATED245.85. ANNEXURE E. COPY OF THE FRONT PAGE OF THE
PASSPORT OF THE PETITIONER'S DAUGHTER, SRI. JANANI VASANTH
MARAR. ANNEXURE F. COPY OF THE FRONT PAGE OF THE PASSPORT OF
THE PETITIONERS SON SRI. ROSHAN VASANTH MARAR. RESPONDENT(S)
EXHIBITS : NIL ----- //TRUE COPY// P.S.
TO JUDGE Mn K. RAMAKRISHNAN, J.

..... CrI.M.C.No. 1024 of 2014
..... Dated this the 20th day of February, 2014.

ORDER

This is an application filed by the accused in C.C.No.790/2013 on the file of the
Chief Judicial Magistrate Court, Thiruvananthapuram, to quash the proceedings
under Section 482 of the Code of Criminal Procedure.

2. The case of the petitioner was that she is the sole accused in C.C.No.790/2013
on the file of the Chief Judicial Magistrate Court, Thiruvananthapuram. A case was
registered by the Museum police, Thiruvananthapuram as Crime No.1188/2013
when it was brought to their notice that the petitioner being a Sri Lankan national
overstayed in Kerala beyond the visa period from 1.9.2011 till 24.8.2013. When
she went to Taj Vivanta Hotel for stay on 28.4.2013 and produced the passport as
address proof, the hotel authorities found that there is no proper visa and that was

intimated to the police. On that basis the petitioner was arrested and the above case was registered. After investigation final report was filed and it was taken on file as C.C.No.790/2013 on the file of the Chief CrI.M.C.No. 1024 of 2014 2 Judicial Magistrate, Thiruvananthapuram for the offence under Section 14(a) of the Foreigners Act, 1946. It is alleged that the petitioner applied for extension of visa before 1.9.2011. It is impossible for the petitioner to apply for Visa while in custody and her application, if any, filed after 1.9.2011 would have resulted in black listing of her passport or look out notice from Ministry of Home Affairs. Such eventualities have not happened and her application was processed and she is currently holding valid visa till 6.1.2015. The Government of India in effect regularised her alleged overstay by issuing extension of visa. According to the petitioner, no offence has been committed and it is liable to be quashed. Hence she filed the application seeking the following relief: On the above grounds, it is humbly prayed that the Honourable court may be pleased to call for the records of the case and quash the Final Report in C.C.No.790/2013 raised from Crime No.1188/13 of Museum Police Station, Thiruvananthapuram for offences under Section 14(a) of Foreigners Act, 1946 which is pending as on the file of the Chief Judicial Magistrate Court, Thiruvananthapuram in exercise of the inherent powers of this Court in the interest of justice.

3. Heard the counsel for the petitioner and the learned Public Prosecutor. CrI.M.C.No. 1024 of 2014 3 4. The counsel for the petitioner submitted that since she overstayed beyond the period of visa that itself will an offence under the Act. But the Government of India has renewed her visa and allowed her overstay tantamount to condonation of the same and as such it cannot be treated as an offence at this stage. In the alternative, if the court is of the view that it is not a fit case to quash under Section 482 of the Code of Proceedings, then a direction may be granted to the lower court to show leniency while imposing the sentence.

5. The learned Public Prosecutor submitted that subsequent issuance of visa is not a ground to quash the proceedings.

6. It is an admitted fact that the petitioner is a Sri Lankan national and she came to India with valid visa which expired on 1.9.2011. Thereafter she had not renewed

the visa till 24.8.2013. When this fact was intimated to the police by the hotel authorities namely Taj Vivanta when she went there for stay and produced the Passport for identity, she was arrested. Further, after investigation, final report was filed and the case was taken on file. Further, in Annexure B order of this Court while rejecting the bail application it was mentioned that CrI.M.C.No. 1024 of 2014 4 allowing a person to stay in India without any visa itself is an offence. So, it is clear from the order that a person who overstayed without any document will attract the provisions of the Foreigners Act which will be an offence under the Act. Subsequent issuance of visa will not take away the commission of the offence. So, considering the circumstances of the case, this Court feel that there is no ground to quash the proceedings as claimed in the petition. Further, it is left open to the court below to consider whether subsequent issuance of visa can be taken as a mitigating circumstance in imposing sentence, With the above observations, the petition is dismissed. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge CrI.M.C.No. 1024 of 2014 5

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