

Asmabi Vs. the State of Kerala

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Court : Kerala

Decided On : Apr-29-2014

Judge : Honourable Mr. Justice K.Abraham Mathew

Appellant : Asmabi

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW TUESDAY, THE 29^H DAY OF APRIL 2014 9TH VAISAKHA, 1936 CrI.MC.No. 2391 of 2014 ----- CC4062011 of J.M.F.C.-II, PERINTHALMANNA CRIME NO. 7/2011 OF WANDOOOR POLICE STATION , MALAPPURAM PETITIONER(S): ----- ASMABI W/O.MOHAMMED KUTTY T.K, 'HANSAM', VANIYAMBALAM.P.O. WANDOOOR, MALAPPURAM DISTRICT. BY ADV. SRI.U.K.DEVIDAS RESPONDENT(S)/COMPLAINANT & DE-FACTO COMPLAINANT: ----- 1. STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM (CR.NO.7/2011 OF WANDOOOR POLICE STATION).

2. C.R.GEORGE S/O.JOHN, CHENKAVILAVEETIL HOUSE, V/660 ANAND NAGAR, KUDAPPANAKKUNNU.P.O. THIRUVANANTHAPURAM-43. BY PUBLIC PROSECUTOR SRI. SHYSON P. MANGUZHA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29-04-2014, THE COURT ON THE

SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 2391 of 2014
----- APPENDIX ANNEXURES ----- ANNEXURE I- A
COPY OF THE F.I.R. IN CRIME NO.7 OF 2011 OF WANDOOD POLICE
STATION. ANNEXURE II- TRUE COPY OF THE POWER OF ATTORNEY
DATED 29.1.1996. ANNEXURE III- TRUE COPY OF THE ASSIGNMENT DEED IN
THE NAME OF THE PETITIONER. ANNEXURE IV- TRUE COPY OF THE
PURCHASE CERTIFICATE IN THE NAME OF MRS.FRAGRANCE BHAMINI.
ANNEXURE V- TRUE COPY OF THE POWER OF ATTORNEY
DATED 31.10.2005. ANNEXURE VI- TRUE COPY OF THE ASSIGNMENT DEED
NO.6358/2005 IN SRO WANDOOD. ANNEXURE VII- TRUE COPY OF THE
ASSIGNMENT DEED NO.279/2006 IN SRO WANDOOD. ANNEXURE VIII- TRUE
COPY OF THE POSSESSION CERTIFICATE IN THE NAME OF THE
PETITIONER. ANNEXURE IX- TRUE COPY OF THE BUILDING TAX RECEIPT
IN THE NAME OF THE PETITIONER. ANNEXURE X- TRUE COPY OF THE
ENCUMBRANCE CERTIFICATE ISSUED BY THE SRO WANDOOD.
ANNEXURE XI- TRUE COPY OF THE NOTICE SEND BY THE RESPONDENT
TO THE PETITIONER. ANNEXURE XII- TRUE COPY OF THE NEW FINAL
REPORT IN THE C.C.NO.406 OF 2011 ON THE FILES OF THE JFCM-II,
PERINTHALMANNA. //True Copy// P.A. To Judge K. ABRAHAM MATHEW, J - - -
----- CRL.M.C.No. 2391 of 2014 ----- Dated
29th April, 2014 -----

ORDER

The petitioner is the second accused in C.C.No.406 of 2011 on the file of the Judicial First Class Magistrate Court-II, Perinthalmanna which has been registered for offences under Sections 406, 419, 420, 468, 471, 209 and 201 r/w Section 34 IPC. In the first investigation, there was only one accused and the petitioner was not an accused in it. But in the further investigation, the police filed a final report to the effect that she is also involved in the commission of the offences. Thus there are two final reports before the learned Magistrate. The prayer of the petitioner is to quash the proceedings in the lower Court.

2. Heard both sides. CrI.M.C.2391/14 2 3. In the first report filed before the learned Magistrate under Section 173(2) Cr.P.C, the petitioner was not an accused and in

the supplementary report filed under Section 173(8) Cr.P.C, she has been made an accused. The submission of the learned counsel is that the second report is invalid and illegal and it should be quashed.

4. When there are two reports before the Court, it is for the Court which conducts the enquiry to decide whether to take cognizance or not to take cognizance on the basis of the materials collected in the first investigation as well as in the further investigation. Both are invalid reports. This Court cannot quash the proceedings merely because there are two reports before the lower Court. The discretion is with the learned Magistrate to decide as to what course he shall take. This Court under Section CrI.M.C.2391/14 3 482 Cr.P.C cannot place any fetter on his exercising such discretion. In the result, this CrI.M.C is disposed of with a direction to the petitioner to appear before the lower Court and plead for a discharge under Section 227 Cr.P.C., if so advised. SD/- K. ABRAHAM MATHEW, Judge MrCs
//True Copy//

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