

Musthafa Vs. State

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Court : Kerala

Decided On : May-26-2014

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Musthafa

Respondent : State

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 26TH DAY OF MAY 2014 5TH JYAISHTA, 1936 CrI.MC.No. 2434 of 2014 (F) ----- [IN C.C.NO.1488/2012 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT NO.I, KANNUR, IN CRIME NO.1103/2011 OF KANNUR TOWN POLICE STATION, KANNUR DT.,] PETITIONER/ACCUSED NO.2: ----- MUSTHAF, S/O. ALI, AGED 49 YEARS, T.K.HOUSE, ARIYIL .P.O, PATTUVAM AMSOM, TALIPARAMBA TALUK, KANNUR DISTRICT. BY ADVS.SRI.V.A.SATHEESH, SRI.V.T.MADHAVANUNNI. RESPONDENT/COMPLAINANT: ----- STATE, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, THROUGH S.H.O, KANNUR TOWN POLICE STATION, KANNUR DT., BY PUBLIC PROSECUTOR SMT. S. HYMA. THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26-05-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Prv. CRL.M.C. NO.2434/2014 - F: APPENDIX PETITIONER'S ANNEXURES:

ANNEXURE A1: TRUE COPY OF THE

ORDER

IN B.A.NO. 8790/2011 OF THIS HON'BLE COURT DATED 8.11.2011. ANNEXURE A2: TRUE COPY OF THE

ORDER

IN CRL.M.A.NO. 4109/2012 IN B.A.NO. 8790/2011 OF THIS HON'BLE COURT DATED 7.9.2012. ANNEXURE A3: TRUE COPY OF THE PETITION IN C.M.P.NO.727/2013 AND ITS

ORDER

THEREON ON THE FILE OF J.C.M.COURT NO.1, KANNUR. RESPONDENTS' ANNEXURES: NIL. //TRUE COPY// P.A. TO JUDGE. Prv. K. Ramakrishnan, J.

===== Crl.M.C.No.2434 of 2014
===== Dated this, the 26th day of May, 2014.

ORDER

This is an application filed by the petitioner who is the 2nd accused in C.C.No.1488/12 on the file of the Judicial First Class Magistrate Court, No-I, Kannur to set aside the order dismissing the application for return of passport under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is accused No.2 in C.C.No.1488/12 on the file of the Judicial First Class Magistrate Court, No-I, Kannur. This was originated on the basis of Crime No.1103/2011 of Kannur Town Police Station which was registered on the basis of the complaint given by the de facto complainant against the petitioner and others alleging offences under Section 420 read with Section 34 of Indian Penal Code. As per Annexure A1 order, this court has granted bail to the petitioner on 08.11.2011 with condition inter alia directing the petitioner to surrender his passport and accordingly, he had surrendered his passport and released on bail. Thereafter, since he wanted the passport temporarily to Crl.M.C.No.2434 of 2014 :

2. : go abroad, he moved this court and as per Annexure A2 order, this court has directed to release of the passport for a temporary period of two months and accordingly, he had after getting back the passport, surrendered the same. Later after that purpose, now again he wants to go abroad. So, he filed Annexure 3 petition seeking the return of the passport for a temporary period. But, the same was dismissed by the learned magistrate by the impugned order which is made part of Annexure 3 application itself stating that, that court has no power to release the passport. So, petitioner has no other remedy except to approach this court seeking the following relief: "To quash Annexure A3 order of the lower court and direct the lower court to release the passport of the petitioner as early as possible."

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

4. The Counsel for the petitioner submitted that earlier as per the directions of this court, the passport was returned to the petitioner and after the period, he had surrendered the passport. Now, he wants to go abroad again for which purpose, the passport is required. CrI.M.C.No.2434 of 2014 :

3. :

5. On the other hand, the learned Public Prosecutor submitted that there is no illegality committed by the court below and passing the order as bail was granted by this court and as the condition for granting bail, surrender of passport was also made as a condition.

6. It is an admitted fact that the petitioner is the 2nd accused in Crime No.1103/11 of Kannur Town Police Station which after investigation, pending before Judicial First Class Magistrate Court, No-I, Kannur as C.C.No.1488/2012. It is also an admitted fact that as per Annexure A1 order in B.A.No.8790/11, this court has granted bail to the petitioner with conditions inter alia that he shall surrender his passport before the concerned magistrate court. It is also an admitted fact that earlier for similar purpose, he filed an application before this court as CrI.M.A.No.4109/12 and this court has granted permission and directed the magistrate to release the passport for a period of two months after getting an affidavit that he will surrender the passport within that period. Since he wanted to go abroad again, he filed the Annexure 3 petition. It is mentioned in the petition

that he has to go abroad to settle his financial matters in connection with his Crl.M.C.No.2434 of 2014 :

4. : business, for which he requires the passport. But, the learned magistrate dismissed the application on the ground that, that court has no power to grant the relief. It is true that there is nothing mentioned in the bail order as to whether he can go abroad with the permission of the lower court or not. But, a condition has been imposed for condition of the passport and accordingly, the petitioner had surrendered the passport. Further, such a condition has been imposed for the purpose of ensuring the presence of the petitioner during investigation. But, in this case, investigation has been completed and final report has already been filed. It is true, court can retain the condition, if the court feels that such a condition is required for procuring the presence of the petitioner for the purpose of trial as well.

7. In the decision reported in the decision reported in Asok Kumar v. State of Kerala [2009 (2) KLT712, this court has held that merely because a crime has been registered is not a ground for denying permission to the petitioner to get temporary permission to go abroad and get the passport released for that purpose. Further, in this case, on an earlier occasion, this court has permitted the release of Crl.M.C.No.2434 of 2014 :

5. : the passport as well. Merely because the case is pending before a court is not a ground to deny the petitioner to go abroad to pursue his employment permanently and if such a procedure is adopted that he is likely to cause loss of his employment itself. So, whenever situations arises for the parties to go abroad, that must be considered by the court and the court can grant permission for that purpose and limiting the period for which the permission can be granted as well. So, considering the circumstances, this court feels that the petition can be disposed of as follows: If the petitioner files a fresh application before the concerned magistrate court stating the reason in detail for his necessity to go abroad and the period for which he want to be in abroad and seeking permission to release the passport and permission to go abroad for that purpose, then, the court is directed to consider that application and pass appropriate orders granting permission in view of the dictum laid down in the decision reported in Asok Kumar

v. State of Kerala [2009 (2) KLT712, on such conditions as it may deem fit to impose for that purpose. If such an application is filed by the petitioner before that court, then, the learned magistrate is directed to dispose of that application within two weeks from the date of filing Crl.M.C.No.2434 of 2014 :

6. : of that application. With the above direction and observation, the petition is disposed of. Office is directed to communicate this order to the concerned court immediately. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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