

Chellamma Vs. State of Kerala

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Court : Kerala

Decided On : Jun-30-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Chellamma

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 30TH DAY OF JUNE 2014 9TH ASHADHA, 1936 CrI.MC.No. 3309 of 2014 () ----- CC27102009 of JUDICIAL FIRST CLASS MAGISTRATE COURT-III, PUNALUR PETITIONER(S)/7TH ACCUSED: ----- CHELLAMMA, 'ARUNABHA', KUNNICODE.P.O, PIN-691508 KOLLAM DISTRICT. BY ADV. SRI.PIRAPPANCODE V.S.SUDHIR RESPONDENT(S)/RESPONDENT: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR OFFICE OF THE ADVOCATE GENERAL, HIGH COURT OF KERALA ERNAKULAM.(DETECTIVE INSPECTOR, CBCID, KOLLAM). BY PUBLIC PROSECUTOR SMT. P. MAYA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/06-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 3309 of 2014 () ----- APPENDIX PETITIONER(S)' EXHIBITS ----- ANNEXURE-1 COPY OF THE COMPLAINT, DATED 23.3.2001 SUBMITTED BY SRI.PETER SAVAGE

BEFORE THE SUB INSPECTOR OF POLICE,PUNALUR POLICE. ANNEXURE-II COPY OF THE REPORT DATED283.2001 SUBMITTED BY THE SUB INSPECTOR OF POLICE,PUNALUR. ANNEXURE-III COPY OF THE FIR NO.218/2001 DATED283.2001 REGISTERED BY THE PUNALUR POLICE UNDER SECTIONS471467 AND511OF420IPC AGAINST SARA WILLIAMS. ANNEXURE-IV TRUE COPY OF THE REPORT DATED293.2001 SUBMITTED BY THE SUB INSPECTOR OF POLICE,PUNALUR BEFORE THE PUNALUR JUDICIAL FIRST CLASS MAGISTRATE COURT. ANNEXURE-V COPY OF THE ADDITIONAL REPORT DATED64.2001 SUBMITTED BY THE CIRCLE INSPECTOR OF POLICE,PUNALUR BEFORE THE COURT. ANNEXURE-VI COPY OF THE REPORT DATED64.2001 SUBMITTED BY THE CIRCLE INSPECTOR,OF POLICE,PUNALUR BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT,PUNALUR. ANNEXURE-VII COPY OF THE DEATH REPORT SUBMITTED BY SMT.ELIZABETH MATHAI DATED1610.2000. ANNEXURE-VIII COPY OF THE LETTER WRITTEN BY MRS.KUNJUMOL MOHAN,COUNCILLOR OF PATHEKKAR WARD OF PUNALUR MUNICIPALITY. ANNEXURE-IX COPY OF THE CERTIFICATE ISSUED BY SMT.KUNJUMOL MOHAN ON THE REVERSE SIDE AS IS EVIDENT BY ANNEX.VII. ANNEXURE-X COPY OF THE

JUDGMENT

OF THIS HON'BLE COURT IN CRL.M.C.2902/2013. ANNEXURE-XI COPY OF THE

JUDGMENT

DATED3010.2003 OF THIS HON'BLE COURT IN WP(C)18871/2003. ANNEXURE-XII COPY OF THE G.O.(RT)480/04/LSGD DATED32.2004. ANNEXURE-XIII COPY OF THE

JUDGMENT

DATED1110.2007 OF THIS HON'BLE COURT IN W.P(C)9482/2004. ANNEXURE-XIV COPY OF THE G.O.(RT)3158/07/LSGD DATED2011.2007. ANNEXURE-XV COPY OF THE

ORDER

NO.E5/4525/2007 11.12.2007 OF THE DIRECTOR OF URBAN AFFAIRS.
ANNEXURE-XVI COPY OF THE

ORDER

DATED 149.2004 OF THIS HON'BLE COURT IN CRL.M.C.685/2014. CrI.MC.No.
3309 of 2014 ANNEXURE-XVII COPY OF THE

ORDER

NO.G1-2414/86 DATED 16.1989 OF THE MUNICIPAL
COMMISSIONER, PUNALUR MUNICIPALITY. ANNEXURE-XVIII COPY OF THE

ORDER

NO.G1-3551/98 DATED 28.5.98 OF THE SECRETARY, PUNALUR
MUNICIPALITY. ANNEXURE-XIX TRUE PHOTOSTAT COPY OF THE DEATH
REPORT SUBMITTED BY ELIZABETH MATHAI. ANNEXURE-XX COPY OF THE
LETTER DATED 16.10.2000 BROUGHT BY ELIZABETH MATHAI CONFIRMING
THE DEATH OF SARA WILLIAMS ON 12.10.2000. ANNEXURE-XXI COPY OF
THE FINAL REPORT IN CRIME NO.218/2001, WHICH WAS TAKEN TO FILE AS
C.C.2710/2009. ANNEXURE-XXII COPY OF THE PETITION SUBMITTED BY
THE ASSISTANT PUBLIC PROSECUTOR. ANNEXURE-XXIII COPY OF THE

ORDER

DATED 25.7.2013 IN CRL.M.P.8162/2013 OF THE JUDICIAL 1ST CLASS
MAGISTRATE -III, PUNALUR. ANNEXURE-XXIV COPY OF THE

ORDER

DATED 13.1.2014 IN CRL.R.P.2234/2013. ANNEXURE-XXV COPY OF THE

JUDGMENT

DATED 23.2.2012 OF THIS HON'BLE COURT, IN W.P(C)23954/2011. ANNEXURE-
XXVI COPY OF THE

ORDER

NO.VI-9468/2001 DATED 15.2.2013 OF THE DIRECTOR OF URBAN AFFAIRS.
RESPONDENTS EXHIBITS: NIL ----- /TRUE COPY/ P.A.
TO JUDGE SKV K.RAMAKRISHNAN, J ----- CRL.M.C.

No.3309 OF2014----- Dated this the 30th day of June, 2014

ORDER

This is an application filed by the 7th accused in C.C. No.2710 of 2009 on the file of the Judicial First Class Magistrate Court -III, Punalur to quash the proceedings as against the petitioner under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner has been arrayed as 7th accused in Crime No.218 of 2001 of Punalur Police Station along with others alleging offences under Sections 465, 467, 471, 120B, 511 of 420 read with Section 34 of Indian Penal Code. The allegation is that a death certificate issued from the Punalur Municipality showing that one Sara Williams died on 12.10.2000, where as a matter of fact, she did not really die and the death certificate has issued from the Punalur Municipality to claim insurance benefits from HSBC Bank in London.

3. The petitioner in her capacity as Junior Health CRL.M.C. No.3309 OF20142 Inspector, Grade-1, in Punalur Municipality had to work in the section dealing with Registration of Births and Deaths. The death certificate in respect of Sara Williams was issued not by the petitioner, but the same was registered and issued by the Registrar of Births and Deaths, Punalur Municipality. So, the petitioner has no responsibility in issuing the death certificate. It was issued by the Registrar on the strength of a letter issued by the Municipal Councillor of the ward concerned of the said municipality. The crime was registered on 28.3.2001 and final report was filed on in 2009. The Assistant Public Prosecutor filed a petition for withdrawal of the case. But that was dismissed by the learned Magistrate and confirmed by this Court in in Crl.R.P No.2234 of 2013. But, inspite of that, trial of the case has not been proceeded with. On account of the pendency of the case, she is yet to receive her full pensionary and other consequential benefits. So, the petitioner has no other remedy, except to approach this Court seeking the following relief:- CRL.M.C. No.3309 OF20143 " To allow this Crl.M.C., quashing Annexure XXI Final Report and all proceedings in C.C.2710/2009 of the Judicial 1st Class Magistrate's Court -III, Punalur, as against the petitioner." 4. Considering the nature of relief claimed, this Court fell that the case can be disposed of at the

admission stage itself, after hearing the counsel for the petitioner and learned Public Prosecutor and also after getting a report from the concerned court regarding the pendency of the case. Accordingly, a report has been obtained from the Judicial First Class Magistrate Court-III, Punalur. The Learned Magistrate send a report which reads as follows:- "I took charge as the presiding officer of this court on 2/6/2014. This case was called on 2/6/2014. I had posted for verification to 3/6/2014. On 3/6/2014 this court directed APP to take steps for ensuring the presence of CW1 and now the case is posted to 30/08/2014 for evidence of CW1, CW3 and CW4. In this case only one witness that is CW2 is examined in chief so far. Since CW1 is a foreigner and for securing his presence before court and disposal of this case, I request that a period of 12 months may kindly be granted."

5. The counsel for the petitioner submitted that in the departmental enquiry, it was found that the petitioner was not responsible and she was exonerated. Further, the CRL.M.C. No.3309 OF20144 Assistant Public Prosecutor also filed a report stating that no offence is made out and sought permission to withdraw the case. That also shows that there is no prima facie case to proceed against the petitioner or other accused persons. Further, long delay has caused great prejudice to the accused also and the presence of the CW1 could not be procured as he is a foreigner and it is only further delay the proceedings.

6. On the other hand, the learned Public Prosecutor submitted that since, this Court has already dismissed the revision filed against the dismissal of the application for permission to withdraw the case by the Assistant Public Prosecutor and charge has already been framed by the lower court, it is not proper at this stage to invoke Section 482 of Code of Criminal Procedure, but to quash the proceedings.

7. On going through the allegations in this petition, even this Court cannot dispose of the petition expeditiously without impleading the defacto complainant at whose instance the case has been registered and this CRL.M.C. No.3309 OF20145 will only further delay the disposal of the case. Further, it is seen from the allegations made in the petition itself and also from the report obtained from the Judicial First Class Magistrate Court-III, Punalur that charge has already been framed and the case is now posted for evidence and the presence of CW1 could not be procured

because, he is a foreigner and CW2 was examined in chief as well. So, under the circumstances this court feels that it is not a fit case to invoke the power under section 482 Code of Criminal Procedure at this stage as the trial of the case has also already been started. So, petitioner is not entitled to get the relief of quashing the proceedings at this stage. The petitioner can take all the contentions raised by her in the petition before the trial court. Considering the fact that the case is of the year 2009 and the crime was registered in the year 2001, there is some force in the submission made by the counsel for the petitioner that the delay in disposal may likely to cause more hardship to the petitioner as the petitioner has already retired from service and on account of the CRL.M.C. No.3309 OF20146 pendency of the case, the petitioner is not able to enjoy the full pensionary benefits. Considering the circumstances, this Court feels that the petition can be disposed of as follows:- The learned Magistrate is directed to expedite the trial of the case as expeditiously, as possible, at any rate within nine months from the date of receipt of this order. The learned Magistrate is directed to take all earnest steps to procure the presence of CW1 and if it is not possible, then proceed with the case in accordance with law and dispose of the same within the time frame fixed by this Court. With the above direction and observation the petition is disposed of. Communicate this order to the concerned court immediately. Sd/- K.RAMAKRISHNAN, JUDGE. /True Copy/ P.A. To Judge SKV

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