

Alias John Vs. State of Kerala

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Court : Kerala

Decided On : Jul-03-2014

Judge : Honourable Mr. Justice a.Hariprasad

Appellant : Alias John

Respondent : State of Kerala

Advocate for Pet/Ap. : Shri. P.N.Sukumaran

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE
HONOURABLE MR. JUSTICE A.HARIPRASAD THURSDAY,THE3D DAY OF
JULY2014/12TH ASHADHA, 1936 CrI.MC.No. 1097 of 2013 ()
----- AGAINST THE

ORDER

IN MC192012 of SUB DIVISIONAL MAGISTRATE,PALAI
PETITIONER(S)/RESPONDENT : ----- ALIAS
JOHN, AGED40YEARS S/O. JOHN, ILLATHU HOUSE, VELLOOR DESOM
VELLOOR VILLAGE, KOTTAYAM DISTRICT. BY ADVS.SRI.P.N.SUKUMARAN
SRI.D.CHANDRASENAN RESPONDENT(S)/STATE/COMPLAINANT :
----- 1. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB DIVISIONAL MAGISTRATE PALA.

3. SUB INSPECTOR OF POLICE VELLOOR POLICE STATION, KOTTAYAM. BY PUBLIC PROSECUTOR SHRI JUSTIN JACOB THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 0307-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO.1097/2013 APPENDIX PETITIONER(S) EXHIBITS ANNEXURE A1 : CERTIFIED COPY OF THE

ORDER

PASSED BY THE SUB DIVISIONAL MAGISTRATE, PALA IN MC NO.19/2012. RESPONDENTS' EXHIBITS : NIL //TRUE COPY// A.HARIPRASAD, J.

----- Crl.M.C. No.1097 of 2013
----- Dated this the 3rd day of July, 2014.

ORDER

Petition filed under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.").

2. Petitioner has come up challenging Annexure-A1 order passed by the Sub Divisional Magistrate, Pala in M.C.No.19 of 2012 whereby he was directed to show cause under Section 111 Cr.P.C. why he should not be ordered to execute a bond for a sum of `25,000/- for a period of one year to keep peace in the locality.

3. Heard Shri P.N.Sukumaran, learned counsel for the petitioner and the learned Public Prosecutor.

4. Learned counsel for the petitioner submitted that the order passed by the Sub Divisional Magistrate is legally unsustainable. It is also submitted that on a conjoint reading of Sections 107 and 111 Cr.P.C. it could be seen that such a callous order is not contemplated under the provisions of law. Section 107 Cr.P.C. says that when an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace, he may in the manner Crl.MC No.1097/2013 2 provided in Section 111 Cr.P.C. require the person to show cause why he should not be ordered to execute a bond for keeping the

peace. Section 111Cr.P.C. says that when a Magistrate acting under Section 107 Cr.P.C. and other provisions mentioned thereunder deems it necessary to require any person to show cause under such Section, he shall make an order in writing, setting forth the substance of the information received and other details. In Annexure-A1 order, it is mentioned that the petitioner was involved in three cases registered by the Velloor Police. Learned counsel for the petitioner submitted that in two cases mentioned therein, the Police had filed a refer report and in one case, the petitioner had been tried and acquitted. This assertion made by the petitioner is not denied by the prosecution. Merely because a person is involved in a criminal case, it is not proper to invoke provision under Section 107 Cr.P.C. It is settled law that imminent breach of the peace is the essential condition for initiation of a proceeding under Section 107 Cr.P.C. Learned counsel for the petitioner relied on a decision of this Court in *Girish P. and others v. State of Kerala and another* (2009 (4) KHC929 to contend that the order is illegal. Paragraph 5 of the decision reads as follows: "S.107 of Code of Criminal Procedure enables an executive Magistrate on receiving information that a person is likely to commit CrI.MC No.1097/2013 3 breach of peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, to require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping peace for such period not exceeding one year as the Magistrate thinks fit. S.111 mandates that when a Magistrate acting under S.107, deems it necessary to require any person to show cause, he shall make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties, if any required, the necessity to set forth "the substance of the information" in the order under S.111 is not an empty formality and is with a purpose. It is to enable the person against whom the order is passed, to appear and show cause before the Magistrate that the allegations are not correct. Unless that information is furnished to the person against whom the order is passed, he cannot defend the allegation as against him." Considering the facts and circumstances of the case, I am of the opinion that Annexure-A1 order is bereft of reasons and it is legally unsustainable. CrI.MC No.1097/2013 4 In

the result, the petition is allowed. Annexure-A1 order passed by the Sub Divisional Magistrate, Pala is hereby quashed. All pending interlocutory applications will stand dismissed. A. HARIPRASAD, JUDGE. cks

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