

Radhakrishnan Vs. State of Kerala

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Court : Kerala

Decided On : Jul-04-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Radhakrishnan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 4TH DAY OF JULY 2014 13TH ASHADHA, 1936 CrI.MC.No. 3664 of 2014 () ----- CC.NO. 1721/2009 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM ----- PETITIONER/ACCUSED : ----- RADHAKRISHNAN, S/O.V SWAMY, AGED 42 YEARS NO 338 B K CHETTY STREET COIMBATORE-640001 BY ADVS. SRI.BINOY VASUDEVAN SMT. P.G. BABITHA RESPONDENTS/STATE/COMPLAINANT : ----- STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA ERNAKULAM-682031 BY PUBLIC PROSECUTOR SMT. S. HYMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04-07-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Mn K. Ramakrishnan, J.

===== CrI.M.C.No.3664 of 2014
===== Dated this, the 04th day of July, 2014.

ORDER

This is an application filed by the petitioner who is the accused in C.C.No.1721/2009 on the file of Judicial First Class Magistrate, No-II, Ernakulam, to issue a direction to the magistrate under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner is the accused in C.C.No.1721/2009 on the file of Judicial First Class Magistrate, No-II, Ernakulam alleging offences under Sections 379 and 511 of the Indian Penal Code. It is submitted that the petitioner had not committed any offence and for the unfortunate circumstances, he had been arrayed as accused and later, charge sheeted. The petitioner was remanded and later he was released from Judicial custody on bail. Since the petitioner's family was shifted from Palakkad to Coimbatore, the summons issued by the Court did not reach him. Consequent to the non appearance of the petitioner before the court below, the learned magistrate has issued non-bailable warrant against the petitioner. Now, non-bailable warrant is pending against him. Though the petitioner is prepared to Crl.M.C.No.3664 of 2014 :

2. : surrender, in view of the pendency of non bailable warrant against him, he apprehends that, he is likely to be remanded and his bail application will not be considered on the date of filing of the application itself. So, the petitioner has no other remedy except to approach this Court seeking the following relief: "To direct the Court of the learned Judicial First Class Magistrate II, Ernakulam to release the petitioner on bail in the event of his surrender in C.C.No.1721/2009 notwithstanding the issuance of Non Bailable Warrant to him in the interest of justice." 3. Considering the nature of relief claimed in the petition, this Court felt that the petition can be disposed of at the admission stage itself after hearing the Counsel for the petitioner and the learned Public Prosecutor.

4. Learned counsel for the petitioner submitted that his only apprehension is that if he surrenders, his bail application will not be considered on the same day and he will be remanded to custody.

5. The petition was opposed by the Public Prosecutor on the ground that the petitioner is an absconding accused.

6. It is an admitted fact that the petitioner is the accused in C.C.No.1721/2009 on the file of Judicial First Class CrI.M.C.No.3664 of 2014 :

3. : Magistrate, No-II, Ernakulam alleging offences under Sections 379 and 511 of Indian Penal Code. Consequent to the non appearance of the petitioner before the court below, the learned magistrate has issued non-bailable warrant against the petitioner. The apprehension of the petitioner that, if he surrenders before the court below and moves for bail, he will be remanded and his application will not be considered on the date of filing itself is not genuine and without any basis. This Court has time and again observed in several petitions of this nature that the Presiding Officers of the criminal courts are duty bound to dispose of the bail applications, if any, filed by the accused persons on their surrender on the date of filing of the application itself unless compelling circumstances warrant postponement of the same to a future date. Further, this court cannot direct the magistrate to grant bail in this application, as it is that court has to consider the circumstances of each case. So, in fact, there is no necessity to issue any direction as sought for in the petition. However, considering the apprehension expressed in the petition, this Court feels that the petition can be disposed of as follows: If the petitioner surrenders before the Judicial First Class Magistrate Court No-II, Ernakulam and moves for CrI.M.C.No.3664 of 2014 :

4. : recalling the warrant and for releasing him on bail in C.C.No.1721/2009 (Crime No.445/2009 of Central Police Station, Ernakulam) now pending before that court, then, the learned Magistrate is directed to consider and dispose of the bail application after hearing the Assistant Public Prosecutor of that court in accordance with law as far as possible on the date of filing of the application itself. 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