

Jose Thomas Vs. State of Kerala

Jose Thomas Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1156791

Court : Kerala

Decided On : Jul-16-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Jose Thomas

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE 16TH DAY OF JULY 2014 25TH ASHADHA, 1936 CrI.MC.No. 3851 of 2014 ()
----- CC.NO. 1578/2013 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -II, THAMARASSERY -----
PETITIONER/ACCUSED: ----- JOSE THOMAS, AGED 63 YEARS, S/O. THOMAS, MANAGING PARTNER, HILL VIEW VALLEY NATURE RESORT/GIRIDHARSAN RESORT, PATHUPADY P.O., EANGAPUZHA, KOZHIKODE. BY ADVS. SRI. S. RAJEEV SRI. K. K. DHEERENDRAKRISHNAN
RESPONDENT(S)/STATE: ----- STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM - 682 031 BY PUBLIC PROSECUTOR SMT. P. MAYA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16-07-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sts K. Ramakrishnan, J.

ORDER

This Criminal Miscellaneous Case is filed by the petitioner who is arrayed as accused in C.C.No.407/2014 on the file of Judicial First Class Magistrate Court, No-II, Thamarassery, to issue direction to the Magistrate under Section 482 of the Code of Criminal Procedure.

2. The case of the petitioner in the petition is that he is the accused in C.C.No.407/2014 originated on the basis of a private complaint filed by the complainant alleging offences under Section 138 of the Negotiable Instruments Act and it is pending before Judicial First Class Magistrate Court, No-II, Thamarassery. The complainant filed 10 prosecutions under Section 138 of the Act. The petitioner earlier appeared and got enlarged on bail in C.C.No.407/2014. In none of the other cases, the petitioner was served with the summons and he was not aware of the posting dates. Consequent to the non appearance of the petitioner, the learned magistrate issued non bailable warrant Crl.M.C.No.3851 of 2014 :

2. : to the petitioner. Now, non bailable warrant is pending against him. Though the petitioner is prepared to 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 Judicial Magistrate of First Class-II, Thamarassery, to recall the non-bailable warrant pending against the petitioner in CC No.1578/2013 and be further pleased to direct the learned magistrate to enlarge the petitioner on bail on the next posting date." 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 dispensing with notice to the complainant.

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 and he also submitted that it is a Crl.M.C.No.3851 of 2014 :

3. : bailable offence.

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 the accused in C.C.No.407/2014 on the file of Judicial First Class Magistrate Court, No-II, Thamarassery alleging offences under Section 138 of Negotiable Instruments Act. The petitioner earlier appeared and released on bail in C.C.No.407/2014. Since the petitioner was not served with summons in other cases and he was not aware of the posting dates, he could not appear and the learned magistrate issued non bailable warrant to the petitioner in the above case. 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 Crl.M.C.No.3851 of 2014 :

4. : postponement of the same to a future date. Further, the offence under Section 138 of the above Act is a bailable offence as well. 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, Thamarassery and moves for recalling the warrant and for releasing him on bail in C.C.No.1578/2013, now pending before that court, then, the learned Magistrate is directed to consider and dispose of the bail application after hearing the Counsel for the complainant as well 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

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com