

Noushad Vs. State of Kerala

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Court : Kerala

Decided On : Jul-16-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Noushad

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 OP(CrI.).No. 115 of 2014 (Q) ----- (CRL.M.P.NO.2519/2013 IN CC.NO.637/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, NORTH PARAVUR) CRIME NO.497/2003 OF PARAVUR POLICE STATION ----- PETITIONER/DEFACTO ----- COMPLAINANT: NOUSHAD, S/O.MUHAMMED, AGED 40 YEARS, MAVELIPADATH, PUTHENPURACKAL, PANACHIKKAPARAMBIL, KIZHAKKEPRAM KARA, KOTTUVALLY VILLAGE, PARAVUR TALUK. BY ADV. SRI.S.SHYAM RESPONDENT(S)/STATE AND ACCUSED: ----- 1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031.

2. MOITHEEN,S/O.AMMU, KALARIPARAMBIL, VANIAKKADU BHAGAM, KIZHAKKEPRAM KARA, KOTTUVALLY VILLAGE, PARAVUR TALUK-683 519.

3. SALIM,S/O.MOITHEEN, KALARIPARAMBIL, VANIAKKADU BHAGAM, KIZHAKKEPRAM KARA, KOTTUVALLY VILLAGE, PARAVUR TALUK-683 519.

4. SUDHEER,S/O.ABDUL REHMAN, CHOWTHIPARAMBIL, VANIAKKADU, KIZHAKKEPRAM KARA, KOTTUVALLY VILLAGE, PARAVUR TALUK-683 519.

5. MUKUNDAN,S/O.IRAVI GOPALAN NAIR, KARIKKAPPILLY, RESIDING AT KONNAPPILLIL, KAITHARAM KARA, KOTTUVALLY VILLAGE, PARAVUR TALUK-683 519.

6. RAJANI,W/O.MUKUNDAN, KARIKKAPPILLY, RESIDING AT KONNAPPILLIL, KAITHARAM KARA, KOTTUVALLY VILLAGE, PARAVUR TALUK-683 519. R1 BY GOVERNMENT PLEADER SMT. MAYA.P. THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION ON1607-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts OP(Crl.).No. 115 of 2014 (Q) ----- APPENDIX PETITIONER(S)' EXHIBITS: ----- P1- TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE JFCM, NORTH PARAVUR AS CRL.M.P.NO.5414/2003. P2- TRUE COPY OF FIR NO.497/2003 OF THE PARAVUR POLICE STATION. P3- TRUE COPY OF THE OPINION GIVEN BY THE FINGER PRINT EXPERT OF THE FINGER PRINT BUREAU THIRUVANANTHAPURAM. P4- TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER FOR FURTHER INVESTIGATION AS CRL.M.P.2519/2013. RESPONDENT(S)' EXHIBITS: NIL /TRUE COPY/ P.A.TO.JUDGE sts K. Ramakrishnan, J.

===== O.P.(Criminal).No.115 of 2014
===== Dated this, the 16th day of July, 2014.

JUDGMENT

This is an application filed by the petitioner for giving direction to the Judicial First Class Magistrate Court, North Paravur to dispose of Crl.M.P.No.2519/2013

expeditiously in C.C.No.637/2010 pending before that court under Article 227 of Constitution of India.

2. It is alleged in the petition that petitioner is the de facto complainant in C.C.No.637/2010 on the file of the Judicial First Class Magistrate Court, North Paravur and respondents 2 to 6 are the accused in the case. It was in respect of fabrication of a power of attorney and execution of a sale deed of an item of property belonging to the petitioner and others and thereby they have committed the offence punishable under Sections 419, 420, 465, 466, 468 & 471 read with Section 34 of Indian Penal Code. The police has not conducted proper investigation and they have not identified the person who had impersonated the complainant and created the document and made him accused in the case and without conducting proper investigation, final report was filed and it O.P.(Criminal).No.115 of 2014 :

2. : was taken on file and pending as C.C.No.637/10 pending before that court. The petitioner filed CrI.M.P.No.2519/13 seeking further investigation. But, the learned magistrate has not passed any orders in that application so far. So, the petitioner has no other remedy except to approach this court seeking the following relief: "To call for the records relating to C.C.No.637/2010 of JFCM, North Paravur pending disposal of the above Original Petition(crl)." 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 and after getting a report from the concerned magistrate court. Accordingly, a report has been received from the Judicial First Class Magistrate Court, No-I, North Paravur which reads as follows: "CMP.2519/13 is an application filed u/s.156(3) and 173 (8) Cr PC by the de facto complainant in CC.637/10 seeking order directing SHO, N.Paravur for making further investigation in the case. The application was filed on 4.9.2013 and it was posted for hearing to 4.10.2013. On that date counsel for the petitioner was not ready for hearing. Hence it was adjourned to 31.10.13. On 31.10.13 it was again posted for hearing to 28.12.2013. Since there was no sitting on 28.12.2013 petition was adjourned to 15.3.2014. On 15.3.2014 as there was no O.P.(Criminal).No.115 of 2014 :

3. : sitting, the petition was again adjourned to 3.5.2014. Since there was no regular sitting on 3.5.14 the petition was adjourned to 19.7.14. I took full charge of Judicial 1st Class Magistrate, N.Paravur on 2.6.2014. The next posting date of this case is 19.7.2014. I may humbly submit that a five days time is required for disposing of the application if petitioner is ready to argue the matter on 19.7.14 itself. I may further humbly submit that order of the Hon'ble Court is received only on 10.7.2014 and case bundle was traced out only 14.7.2014. Hence delay was occurred in reporting the matter. The delay may be condoned." 4. When the application came up for hearing today, the learned Counsel for the petitioner submitted that the petition may be disposed of on the basis of the report submitted by the learned magistrate. In the report, it has been mentioned that the petition is now posted to 19.07.2014 and the magistrate will dispose of the same within 5 days from that date if the petitioner is prepared to argue the matter. If the petitioner's Counsel argue the matter, then, the learned magistrate is directed to dispose of that petition within the time mentioned in the report. So, the report of the learned magistrate is recorded and the petition is disposed of accordingly. Office is directed to communicate this order to the O.P.(Criminal).No.115 of 2014 :

4. : concerned court immediately by fax. Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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