

Tony Raj Vs. State of Kerala

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Court : Kerala

Decided On : Aug-18-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Tony Raj

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 18TH DAY OF AUGUST 2014 27TH SRAVANA, 1936 CrI.MC.No. 4013 of 2014 ----- CMP NO.3533/2014 OF JUDICIAL FIRST CLASS MAGISTRATE COURT FOR TRIAL OF FOREST OFFENCES, NEDUMANGADU, THIRUVANANTHAPURAM CRIME NO. 18/2013 OF PALODE FOREST RANGE OFFICE , THIRUVANANTHAPURAM PETITIONER/ACCUSED: ----- TONY RAJ, S/O. SELVARAJ, TEENA VILLA, PALLITHARA, THUMBA, MENAMKULAM, THIRUVANANTHAPURAM DISTRICT. BY ADV. SRI.G.SUDHEER (KARAKONAM) RESPONDENT/STATE: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. BY PUBLIC PROSECUTOR SMT.SHEEBA BY SPL.GOV'T.PLEADER (FOREST)SRI.M.P.MADHAVANKUTTY THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18-08-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Kss CrI.MC.No. 4013 of 2014

----- APPENDIX PETITIONER(S)' ANNEXURES:
----- ANNEXURE A: TRUE COPY OF

ORDER

IN CMP NO.1692/2013 DATED 9.9.2013 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT FOR TRIAL OF FOREST OFFENCES, NEDUMANGADU. ANNEXURE B: TRUE COPY OF VISA FOR VISITING U.S.A. FOR THE PURPOSE OF BUSINESS. ANNEXURE C: TRUE COPY OF

ORDER

DATED 9.6.2014 IN CMP NO.3533/2014 PASSED BY THE JUDICIAL FIRST CLASS MAGISTRATE COURT FOR TRIAL OF FOREST OFFENCES, NEDUMANGADU. RESPONDENT(S)' ANNEXURES:

----- N I L /TRUE COPY/ P.A.TO JUDGE Kss K. Ramakrishnan, J.

===== Crl.M.C.No.4013 of 2014
===== Dated this, the 18th day of August, 2014.

ORDER

This is an application filed by the 03rd accused in OR.No.18/2013 of Palode Forest Range challenging the order passed by the learned magistrate in Crl.M.P.No.3533/2014 under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner has been arrayed as third accused in OR.No.18/2013 of Palode Forest Range alleging commission of the offences along with others punishable under Sections 2(12), 2(16)(b), 2(16)(d), 2(36), 9, 39, 31(1)(d), 42 and 22 of Wild Life Protection Act. The allegation was that the accused persons were found to be in possession of 'Iruthalamoori Snake' which was included in Schedule IV, for the purpose of sale. The petitioner was having visa issued by United States of America and he wanted to visit United States of America for business purpose. So, he filed Crl.M.P.No.3533/2014 seeking release of his passport surrendered in obedience of the condition imposed as per Annexure A while granting bail. But, the learned magistrate dismissed the

application by Annexure C order which is under Crl.M.C.No.4013 of 2014 :

2. : challenge by the petitioner by filing this petition.

3. Heard the Counsel for the petitioner and the learned Special Government Pleader appearing for Forest.

4. The Counsel for the petitioner submitted that he does not want to go abroad permanently. He wanted only to go for a temporary period and the investigation has not been completed and final report has not been filed in the case so far. If he is indefinitely prevented from going abroad, he will be put to serious hardship. The lower court has not considered the relevant aspects in this matter but simply dismissed the application without application of mind.

5. The learned Special Government Pleader for Forest opposed the application on the ground that, if he goes abroad, he will not be available for trial.

6. It is an admitted fact that the petitioner has been arrayed as 3rd accused in OR.No.15/13 of Paruthipally Forest Range which has now been transferred to Palode Forest Range where it was re numbered as OR No.18/2013 of Palode Forest Range. It is also an admitted fact that as per Annexure A order, the petitioner was granted bail on certain conditions including surrender of his passport and also appear before the Crl.M.C.No.4013 of 2014 :

3. : investigating officer on all Mondays and Saturdays for two months. This order was dated 09.09.2013. The prosecution has no case that he had not complied with the condition of appearing before the investigating officer as directed, during the period of two months mentioned in the order. It is, as per the directions of the court that he has surrendered his passport. Though, the crime was registered in the year 2013, so far final report has not been filed in the case and it was not taken cognizance by the court as well. It is not known as to how much time it will take for the investigating officer to complete the investigating and file the final report as well. So, it is not proper for keeping the accused for long period, not to go abroad to pursue the employment or to get his visa renewed or to pursue his business if any there, merely because he had involved in a case. When the mandate of the

constitution for speedy trial could not be achieved, then, court must also consider the fact regarding gist of the accused for his free movement to eke out his livelihood by doing his avocation either in India or outside. In this case, the petitioner wants only a temporary permission to go abroad. Further, the passport authorities will not permit the petitioner Crl.M.C.No.4013 of 2014 :

4. : to go abroad if there is any case pending against him without getting permission from that court. So, for that purpose also permission of the court is required. So, under the circumstances, this court feels that setting aside order passed by the court below in Annexure C, allowing the petitioner to file an application for permission to go abroad specifying the period for which he wanted to go abroad showing the purpose and for that purpose seeking release of the passport and directing the magistrate to dispose of that application taking into account the principles laid down in the decision reported in Asok Kumar v. State of Kerala [2009 (2) KLT712 will be sufficient and that will meet the ends of justice. So, the petition is allowed, order of the lower court Annexure C is set aside and the petition is disposed of as follows: If the petitioner files a fresh application before that court stating the reason for his going abroad and also the period for which he wanted to go abroad and wanted the passport to be released for that for that purpose temporarily, then, the learned magistrate is directed to consider and dispose of that application, taking into account the principles laid down in the decision reported in Asok Kumar's case (supra) with such conditions as that court may deem fit to impose in the circumstances of the case without affecting the prosecution to proceed with the Crl.M.C.No.4013 of 2014 :

5. : investigation of the case as well. 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