

Moideen B.T. Vs. State of Kerala

Moideen B.T. Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/1163392

Court : Kerala

Decided On : Aug-25-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Moideen B.T.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 25^H DAY OF AUGUST 2014 3RD BHADRA, 1936 CrI.MC.No. 4825 of 2014 ----- CMP26632013 OF JUDICIAL FIRST CLASS MAGISTRATE - I, KASARAGOD. .. PETITIONER/PETITIONER: ----- MOIDEEN B.T., AGED 30 YEARS, S/O.ABDUL RAHIMAN, RAHHMATH MANZIL, NEAR KHILAR MASJID, BAMBRANA P.O., KASARAGOD DISTRICT. BY ADVS.SMT.HEMALATHA SRI.BINU GEORGE RESPONDENT/RESPONDENT/COMPLAINANT: ----- STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SMT.SAREENA GEORGE THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 25-08-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: MBR/ CrI.MC.No. 4825 of 2014 ----- APPENDIX PETITIONER(S)' EXHIBITS: ----- ANNEXURE-I: CERTIFIED COPY OF

ORDER

DATED 34.2013 PASSED BY JUDICIAL FIRST CLASS MAGISTRATE COURT-I,
KASARAGOD IN CMP NO.2663/2013. RESPONDENT(S)' EXHIBITS: - NIL
----- /TRUE COPY/ P.A. TO JUDGE MBR/ K.
Ramakrishnan, J.

===== Crl.M.C.No.4825 of 2014
===== Dated this, the 25th day of August, 2014

ORDER

This criminal miscellaneous case is filed by the petitioner challenging the order passed by the Judicial First Class Magistrate Court-I, Kasaragod, in C.M.P.No.2663/2013 in Crime No.421/2012 of Manjeshwar police station under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that, the petitioner is the registered owner of the MGV Tipper bearing registration No.KL-14-L-4510 which was seized by the respondent on the allegation that sand was transported in the vehicle in violation of the provisions of the Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter called 'the Act') and a case was registered as Crime No.421/2012 of Manjeshwar Police Station in respect of the same. The petitioner filed C.M.P.No.2663/2013 before the Judicial First Class Magistrate Court-I, Kasaragod, for interim custody of the vehicle. The learned magistrate by Annexure-I order granted interim custody on conditions inter-alia that:

1. Petitioner shall execute bond for Rs. Crl.M.C.No.4825 of 2014 :

2. :

7. 40,000/- with two solvent sureties for the like sum.

2. Petitioner shall deposit an amount of Rs.2,20,000/-(Rupees Two Lakh Twenty Thousand) in cash before the court (being 30% of the valuation of the said vehicle).

3. Petitioner shall produce property security or bank guarantee for the balance amount of Rs.5,20,000/-. The above conditions are being challenged by the petitioner by filing this petition.

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. Heard the Counsel for the petitioner and the learned Public Prosecutor.

5. The Counsel for the petitioner submitted that, in fact the condition imposed by the court below is not proper in view of inclusion of Section '23A' to the above said Act by Amendment Act XV/2013 which came into force from 25.11.2012. Further, this court in another case, granted custody by executing a bond alone.

6. The application was opposed by the learned Public Crl.M.C.No.4825 of 2014 :

3. : Prosecutor on the ground that, there is no illegality in the order passed. A discretion has been given to the court to impose any condition.

7. It is an admitted fact that Vidyanagar police had seized the vehicle with No.KL-14-L-4510 which belongs to the petitioner, alleging that it was used for the commission of the offence under the above said Act. It is also an admitted fact that the petitioner had filed an application for interim custody under Section 457 of the Code of Criminal Procedure and the same was allowed by Annexure-I order with following conditions.

1. Petitioner shall execute bond for Rs. 7,40,000/- with two solvent sureties for the like sum.

2. Petitioner shall deposit an amount of Rs.2,20,000/-(Rupees Two Lakh Twenty Thousand) in cash before the court (being 30% of the valuation of the said vehicle).

3. Petitioner shall produce property security or bank guarantee for the balance amount of Rs.5,20,000/-.

4. The petitioner shall not use or cause the said vehicle to be used the commission of offence 5. The sand if any shall be unloaded before releasing the vehicle in the premises of police station concerned. Crl.M.C.No.4825 of 2014 :

4. :

8. Condition Nos. 1 to 3 are being challenged by the petitioner now. It appears that, the learned magistrate had, keeping in mind the decision of this court in Shan V. State of Kerala (2010 (3) KLT413 and Sujith V. State of Kerala (2012 (2) KLT547, imposed these conditions and the present Section 23A, which has been incorporated by Amendment Act XV/2013, which came into force with effect from 25.11.2012 has not been taken note of by the court below.

9. After the above decisions, the Act has been amended by incorporating Section 23A, which deals with the procedure to be followed after seizure, and also power of the court for giving interim custody. This court has considered that provision in Aboobacker v. State of Kerala [2014 (3) KLT26, wherein this court has held that: "The security mentioned therein, has to be liberally construed and a portion of the amount can be directed to be deposited and for the balance amount, the personal bond with sufficient sureties can be directed to be executed and that will be sufficient and that will meet the ends of justice".

10. In view of the dictum laid down in the above decision, the condition imposed by the court below, directing Crl.M.C.No.4825 of 2014 :

5. : the petitioner to deposit 30% value of the vehicle and furnish bank guarantee or property security for the balance amount can be set aside and the same can be modified as follows: The petitioner shall deposit 10% of the value assessed by the Motor Vehicle Department and also execute a bond for the balance amount with two solvent sureties for the like sum each to the satisfaction of that court will be sufficient and that will meet the ends of justice. So condition Nos. 1 to 3 imposed by the court below are set aside and the same are modified, retaining the other conditions as follows: The petitioner is directed to deposit 10% of the value assessed for the vehicle, namely Rs.74,000/- and execute a bond for the balance amount of Rs.6,66,000/- with two solvent sureties for the like sum each to the

satisfaction of the Judicial First Class Magistrate Court-I, Kasaragod. Further, the release of the vehicle will be till the completion of confiscation proceedings under this Act. Other conditions imposed by the court below is retained. With the above modification of the conditions imposed, this criminal miscellaneous case is disposed of. Crl.M.C.No.4825 of 2014 :

6. : 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