

Fathima Vs. State

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Court : Kerala

Decided On : Sep-22-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Fathima

Respondent : State

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN MONDAY, THE 22D DAY OF SEPTEMBER 2014 31ST BHADRA, 1936 CrI.MC.No. 5336 of 2014 ()
----- AGAINST THE

ORDER

COURT, THALASSERY DISTRICT SESSIONS IN SC4412014 OF CRIME NO. 65/2014 OF MATTANNUR POLICE STATION, KANNUR
PETITIONER(S)/PETITIONERS/ACCUSED NOS2AND3

----- 1.W/O.ISMAIL, AGED 39 YEARS FATHIMA
CHAVASSERI, 'SUHANA MANZIL', CHAVASSERI P O IRITTY TALUK, KANNUR
DIST PIN-670702 2.D/O.MOIDU, AGED 28 YEARS SAIJARA K
CHAVASSERI, 'SUHANA MANZIL', CHAVASSERI P O IRITTY TALUK, KANNUR
DIST PIN-670702 BY ADVS.SRI.M.SASINDRAN SRI.SATHEESHAN
ALAKKADAN RESPONDENT(S)/RESPONDENTS/COMPLAINANT:

----- 1.REP STATE BY PUBLIC PROSECUTOR, HIGH

COURT OF KERALA ERNAKULAM-682031 2.(CRIME THE STATION HOUSE OFFICER NO65OF2014 OF MATTANNUR POLICE STATION MATTANNUR-670702, KANNUR DIST BY PUBLIC PROSECUTOR SMT. R. REMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON2209-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.MC.No. 5336 of 2014 () ----- APPENDIX PETITIONER(S)' EXHIBITS ----- ANNEXURE A I:-A TRUE COPY OF THE FIR IN CRIME NO652014 OF MATTANNUR POLICE STATION V.K. MOHANAN, J.

----- CrI.M.C. No. 5336 of 2014 -----
Dated this the 22nd day of September, 2014

ORDER

Petitioners who are ladies, are accused Nos. 2 & 3 in S.C. No. 441 of 2014 on the file of the Sessions Judge, Thalassery, which is a case instituted upon the report in CrI.M.C. No. 65 of 2014 of Mattannur Police Station, for the offences punishable under Section 376 of IPC and Sections 3 (a) and 4 of Protection of Children from Sexual Offences Act and Sections 9,10 and 11 of Prohibition of Child Marriage Act.

2. The apprehension of the petitioners is that as non-ailable warrant is pending against them, they are likely to sent to jail in case of their surrender before the court below. Therefore, it is prayed to recall the non-ailable warrant issued against them in Crime No. 65 of 2014 of Mattannur Police, Kannur District, and to permit them to appear before the CrI.M.C. No. 5336 of 2014 :2: Sessions Court in S.C. No. 441 of 2014 on the file of the Sessions Court, Thalassery .

3. Heard Adv. Sri. M. Sasindran, the learned counsel for the petitioner and the learned Public Prosecutor.

4. The learned counsel for the petitioner vehemently argued that during the investigation in the above crime, no process were served on them, eventhough they were available in Station but the police laid the charge showing them as absconding. Thus, when the above Sessions Case was instituted, the learned Sessions Judge issued non-ailable warrant against them and if the same are

executed, the same will adversely affect the rights and status of the petitioners who are ladies belonging to Islam. So, the learned counsel for the petitioners submitted that the court below may be directed to withdraw the warrant already issued against them.

5. The learned Public Prosecutor opposing the reliefs sought for submitted that as the petitioners were absconding, the police Crl.M.C. No. 5336 of 2014 :3: was constrained to lay report showing them as absconding.

6. I have carefully considered the submissions made by the counsel for the petitioners as well as the learned Public Prosecutor.

7. Admittedly, the allegation against the accused in the above crime, is that they have committed offence punishable under Section 376 of IPC. Probably, the above allegation as such is not attracted against the petitioners. Considering the other allegations against the petitioner, according to me, especially, when the police have already completed the investigation and laid the charge, the petitioners custody may not be necessary. If the petitioners have no genuine and justifiable reasons, they can appraise the same the learned Judge of the Sessions Court from where the non-bailable warrants are issued, after their surrender before the said court by filing a petition to withdraw the same. As the petitioners are ladies and as the investigation in the above crime has already been completed and the police has already laid Crl.M.C. No. 5336 of 2014 :4: the report, and as the custody of the petitioners are not necessary, I am sure that the learned Sessions Judge will pass appropriate orders and I find no reason to hold that the learned Judge will decline the request of the petitioners to recall the warrant issued against them and for bail. The petitioners shall not be arrested in execution of the non-bailable issued against them till the date fixed for return of the warrant or till the next posting date of the case. Subject to the above observation and direction, this Crl.M.C. Stands disposed of. Dated this the day of 22nd September, 2014. V.K. MOHANAN, JUDGE. ani/