

Joy Vs. State of Kerala

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Court : Kerala

Decided On : Oct-17-2014

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Joy

Respondent : State of Kerala

Advocate for Pet/Ap. : Sri. Santhosh P.Poduval

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS FRIDAY, THE 17TH DAY OF OCTOBER 2014 25TH ASWINA, 1936 Bail Appl..No. 7231 of 2014 ()
----- CRIME NO. 2091/2014 OF THRISSUR EAST POLICE STATION, THRISSUR PETITIONER(S)/ACCUSED: JOY AGED 54 YEARS S/O. VAREED, ARANGASSERY HOUSE, PO CHIYYARAM THRISSUR DISTRICT BY ADVS. SRI. P. SANTHOSH (PODUVAL) SMT. R. RAJITHA SRI. K. D. SREEVISAKH RESPONDENT(S)/STATE: ----- STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM R BY PUBLIC PROSECUTOR, SRI. C. RASHEED THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17-10-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:
das ALEXANDER THOMAS, J.

----- Dated this the 17th day of October, 2014

ORDER

The petitioner is the sole accused in Crime No.2091/2014 of Thrissur East Police Station registered for the offences under section 406, 418, 420, 506(i), 465, 467 and 468 of Indian Penal Code, sections 13, 17 and 18 of Money Lenders Act and sections 3(1)(iv), 3(1)(v), 3(1)(viii) and 3(2)(ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The prosecution allegation is that the lady defacto complainant, belonging to Scheduled Caste community, had borrowed an amount of Rs.50,000/- in the year 1997 and at the relevant time the petitioner obtained her signatures in stamp papers and other papers and deceitfully got her property registered in the name of the accused.

3. Sri.Santhosh P.Poduval, learned counsel for the petitioner, would submit that the entire allegations raised against the petitioner by the lady defacto complainant are preposterous and absolutely unfounded. The petitioner submits that there was B.A. No. 7231 of 2014 -2- absolutely no loan transaction between the petitioner and the defacto complainant lady and that the defacto complainant lady had conveyed her property to the petitioner for valid sale consideration. Thereby, Annexure A sale deed no.3971/1997 dated 24.07.1997 was registered by the Thrissur SRO as early in the year 1997. Later, the petitioner came to know that the defacto complainant had obtained a loan from Koorkkencherry Service Co-operative Bank, which was concealed by her to the petitioner at the time of the sale transaction in the year 1997 and that accordingly he had filed a private complaint before the competent Magistrate Court against the defacto complainant alleging offences against her in that regard and the matter was taken cognizance by the jurisdictional Magistrate and the same is pending as C.C. No.2644/2009 on the files of Judicial First Class Magistrate Court-II, Thrissur, as evidenced by Annexure B dated 27.07.2007. Annexure B is the private complaint initiated by him in this regard before the jurisdictional Magistrate. Summons arising out of Annexure B complaint proceedings was duly served on the defacto complainant

herein and there were few rounds of B.A. No. 7231 of 2014 -3- Mediation, during the pendency of the said proceedings. Later, to wriggle out of her criminal culpability in view of Annexure B proceedings, the defacto complainant lady has submitted Annexure C complaint before the Magistrate as late as on 8.7.2014, which led to the registration of the instant crime No.2091/2014 of Thrissur East Police Station for the aforementioned offences. He would thus urge very strongly that the aforementioned crime has been got registered against him by the defacto complainant lady only to wriggle out from her criminal culpability and falsely implicated the petitioner.

4. Since the offences so registered in the instant crime also involve some of the provisions of Scheduled Cast/Scheduled Tribe (Prevention of Atrocities) Act 1989, there is a statutory inhibition in section 18 of the 1989 Act, making inapplicable the anticipatory bail provisions contained in section 438 of the Code of Criminal Proceedings. The Sessions Court has rejected the anticipatory bail request of the petitioner, on that sole ground, as evidenced by Annexure D Order dated 20.09.2014. B.A. No. 7231 of 2014 -4- 5. The learned Public Prosecutor would submit that the instant crime has been registered against the petitioner in view of the specific directions of the Magistrate under section 156(3) of the Code of Criminal Proceedings, where under Annexure C complaint of the defacto complainant herein was forwarded to the Police for investigation. The Prosecutor would submit that there is statutory inhibition in view of section 18 of the 1989 Act, for consideration of anticipatory bail. The learned Public Prosecutor would fairly submit that considering the totality of the facts and circumstance of the case, the prosecution will not oppose the bail application of the petitioner as and when it is filed before the jurisdictional Magistrate under section 437(1) of the Code of Criminal Proceeding, merely on the aspect regarding involvement of the offences under the above said 1989 Act.

6. Sri. Santhosh P.Poduval, learned counsel for the petitioner would submit that this Court in the case Shanu v. State of Kerala reported in 2000 (3) KLT452 has dealt with situations of this nature and the Court has held that the jurisdictional Magistrate concerned has got jurisdiction to B.A. No. 7231 of 2014 -5- consider the grant of bail to the accused under section 437(1) of the Cr.P.C., irrespective of

the fact that the case triable by the Sessions Court, which is the Court of Session and in that stage, this Court has granted certain specific directions to the jurisdictional Magistrate concerned, etc.

7. Accordingly, the learned counsel for the petitioner would submit that in view of the specific statutory inhibition placed under section 18 of the 1989 Act, against the consideration of anticipatory bail, the petitioner would surrender immediately before the jurisdictional Magistrate concerned and apply for regular bail under section 437(1) of the Code of Criminal Proceedings and that this Court may direct the jurisdictional Magistrate concerned to consider such bail application forthwith and grant him bail. The learned counsel for the petitioner would also fairly submit that the petitioner would fully co-operate with the investigation and that he would report as and when required by the Investigating Officer for the effective conduct of the investigation. B.A. No. 7231 of 2014 -6- 8. Accordingly, it is directed that it is for the petitioner to formally surrender before the jurisdictional Magistrate concerned immediately and submit necessary bail application, in which even the learned jurisdictional Magistrate concerned shall consider such bail application on the same day in terms of section 437(1) of the Code of Criminal Proceedings. The prosecutor will not seriously oppose the bail application merely on the ground that the offences under the SC/ST (Prevention of Atrocities) Act, 1989 are involved in the aforementioned FIR and that it is for the jurisdictional Magistrate to consider the merits of the bail application on same day taking into account the facts and circumstances of this case stated herein above and the submissions made by both sides recorded herein above. This application for anticipatory bail is closed accordingly. Sd/- ALEXANDER THOMAS, JUDGE //True Copy// P.A. To Judge jjj

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