

V.Shibu Kumar Vs. State of Kerala

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Court : Kerala

Decided On : Oct-16-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : V.Shibu Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN THURSDAY, THE 16TH DAY OF OCTOBER 2014 24TH ASWINA, 1936 BAIL APPL..NO. 7392 OF 2014() ----- CRIME NO. VC3/2014/SIU-1, VIGILANCE CASE, SPECIAL INVESTIGATION UNIT-1, POOJAPPURA, THIRUVANANTHAPURAM. PETITIONER/ACCUSED NO1 ----- V. SHIBU KUMAR, AGED 40 YEARS, S/O. A.V.CHETTIYAR, VISHAKHOM, PANAPPETTY, PORAVAZHY P.O, SASTHAMKOTTA, KOLLAM. BY ADVS.SMT.K.KUSUMAM, SRI.BASANT BALAJI, SMT.RENY ANTO. RESPONDENT/COMPLAINANTS: ----- 1. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI -682 031.

2. DIRECTOR, VIGILANCE AND ANTI CORRUPTION BUREAU, PATTOOR, PMG ROAD, THIRUVANANTHAPURAM, KERALA- 695 033.

3. THE SUPERINTEND OF POLICE, VIGILANCE AND ANTI CORRUPTION BUREAU, SPECIAL INVESTIGATION UNIT (1), POOJAPPURA, THIRUVANANTHAPURAM- 695 012. BY SRI.T.ASAF ALI, DIRECTOR GENERAL OF PROSECUTION THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 16-10-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: rs. K. RAMAKRISHNAN, J.

..... B.A.No.7392 of 2014
..... Dated this the 16th day of October, 2014.

ORDER

This is an application for anticipatory bail filed by the first accused in VC3/2014/SIU-I, Vigilance Case/Special Investigation Unit-1, Poojappura, Thiruvananthapuram under Section 438 of the Code of Criminal Procedure.

2. The allegation against the petitioner was that the present petitioner with the help of the second accused demanded an amount of Rs.3 lakhs from the defacto complainant for settling the case in Crime No.1100/2014 of Mangalapuram police station registered on the basis of a private complaint filed by one Madhavan Nair against the defacto complainant in this case and others which is being investigated by him. In fact it is the defacto complainant wanted to settle the matter and when the attempt failed, with a bad motive, he had falsely implicated the present petitioner as accused in this case by filing a false complaint is the allegation made in the petition.

3. According to the counsel for the petitioner, even if the entire allegations were accepted, there is no question of any B.A.No.7392 of 2014 2 offence being attracted as against the petitioner. The case is not probable or believable as well. No incriminating articles have been seized from the house of the petitioner though searches were conducted simultaneously by the Vigilance wing and the counsel also submitted that his client is prepared to abide by any conditions imposed by this Court and arrest is not required in connection with the investigation.

4. On the other hand, the learned Director General of Prosecution appearing for the State submitted that the case is in respect of a police officer, who was expected to conduct investigation in the case fairly as vested in him under the statute, and misusing his official position, he demanded money and wanted to accomplish his motive through an agent and without the presence of the petitioner better investigation could not be possible. His voice test has to be conducted and the cheque said to have been given to him has to be recovered as well.

5. Heard both sides and perused the case diary.

6. It is seen from the records that the above crime was registered on 5.10.2014 under Section 7 of the Prevention of Corruption Act on the basis of the statement given by the defacto complainant alleging that in order to settle Crime B.A.No.7392 of 2014 3 No.1100/2014 of Mangalapuram police station, the present petitioner, who is investigating that case had demanded Rupees three lakhs and he had already given Rs. One Lac and also issued a cheque for the balance amount and since the defacto complainant did not want to pay the amount, he came to the Vigilance Department and gave the complaint. It was on that allegation that the case has been registered. It was admitted that Crime No.1100/2014 was registered on the basis of a private complaint filed by one Madhavan Nair alleging that the accused persons including the defacto complainant in this case obtained an amount of Rs.One Crore from him on making some promise and they did not fulfill the same and did not return the amount also and he filed a private complaint, which was forwarded to the police and on that basis that the crime was registered. It is also in a way admitted during the course of argument that there was an attempt of settlement and that was attempted, in which the investigating officer himself was also informed about the same through the counsel appearing for the first accused in Crime No.1100/2014 of Mangalapuram police station is the submission made by the counsel for the petitioner. The counsel for the petitioner mainly attacked the veracity of the statement given by the B.A.No.7392 of 2014 4 defacto complainant in this case figuring him as a criminal and his statement cannot be believed. But in a trap case only the statement of the defacto complainant alone will be available for the purpose of proving demand at the initial stage. No demand can be proved by any

other evidence normally. Further, it is seen from the case diary file that certain conversation has been made between the defacto complainant and the first accused in this case who is the petitioner herein using personal mobile phone of the present petitioner and also his official mobile phone and on that basis that the second accused has come and collected the amount and the trap team has arrested the 2nd accused and on interrogation it was revealed that he came as instructed by the petitioner to collect the amount on his behalf. Whether these things are believable or not etc are matters to be considered by the trial court at the time of trial. Merely because no incriminating article have been recovered at the time of search itself, is not a ground for disbelieving the case of the prosecution at this stage. Considering the nature of offence and also the person involved, who is expected to use his power to conduct investigation in a fair manner and also the presence of the petitioner may be required for proper investigation, this Court feels that it is not B.A.No.7392 of 2014 5 a fit case to invoke the extra ordinary power under Section 438 of the Code to grant anticipatory bail to the petitioner at this stage. He has neither surrendered before the court or before the investigating officer so far. So, the petitioner is not entitled to get anticipatory bail. The petitioner is at liberty to surrender before the concerned court and move for bail. With the above observations, this petition is dismissed. Sd/- K. RAMAKRISHNAN, JUDGE. /true copy/ P.S to Judge cl B.A.No.7392 of 2014 6