

Fathima vs State of Kerala

Fathima vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1286655

Court : Kerala

Decided On : Jul-23-2024

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : Crl.MC/496/2024

Appellant : Fathima

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
TUESDAY, THE 23RD DAY OF JULY 2024 / 1ST SRAVANA, 1946
CRL.MC NO. 496 OF 2024 IN C.P. NO.34 OF 2023 OF JUDICIAL
MAGISTRATE OF FIRST CLASS -II, KASARAGOD
PETITIONERS/ACCUSED:

1 FATHIMA AGED 36 YEARS W/O SAJID ,PLOT NUMBER 86,GREEN
CASTLE VILLA, CHERUGOLI ,UPPALA,KASARAGOD, PIN - 671322 2
MOHAMMED SAHAD AGED 16 YEARS S/O SAJID , PLOT NUMBER
86,GREEN CASTLE VILLA, CHERUGOLI ,UPPALA,KASARAGOD-
671322, REPRESENTED BY HIS MOTHER AND GUARDIAN

FATHIMA, AGED 36 YEARS, W/O SAJID, PLOT NUMBER 86, GREEN CASTLE VILLA, CHERUGOLI, UPPALA, KASARAGOD, PIN - 671322 BY ADVS. CHRISTINE MATHEW AISWARYA E J VETTIKOMPIL ABESH ALOSIOUS SEN C PUTHUPPARAMPIL

RESPONDENTS/STATE: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 AYISHATH RASHEEDA W/O M.A SHAMEER/MASTHIKUND HOUSE,MULIYAR POST,KASARGOD, PIN - 671542 SR PP - RENJIT GEORGE THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 23.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

Dated this the 23rd day of July, 2024 This Criminal Miscellaneous Case has been filed under Section 482 of the Code of Criminal Procedure, 1973, to quash all proceedings in C.P. No.34/2023 on the files of the Judicial First Class Magistrate Court-II, Kasaragod, arising out of C.M.P. No.1502/2022. The petitioners herein are accused Nos. 1 and 2 in the above case.

2. Heard the learned counsel for the petitioners and the learned Public Prosecutor. Perused the relevant materials available.

3. In this matter, acting on the private complaint

filed by the defacto complainant, the learned Magistrate conducted enquiry and took cognizance for the offences punishable under Sections 341, 294(b), 309, 506(1) read with 34 of Indian Penal Code.

4. Even though, the learned counsel for the

petitioners argued that the proceedings as against both the accused are unwarranted, the learned counsel failed to justify how the cognizance taken by the learned Magistrate is wrong as against the 1 st accused. As on 01.07.2024, the learned counsel for the petitioners submitted that the 2nd petitioner/2nd accused is

a minor and therefore, the cognizance taken against him by the Magistrate is erroneous.

5. In view of the above submission, a report was called for and the learned Magistrate reported as under:

This court had scheduled the enquiry regarding the age of Accused No. 2 in CP counsel for the accused stated that the matter was stayed by the Hon'ble High Court for four months and sought time to produce the stay order. The case was then posted on 08.07.2024, and counsel sought another adjournment to produce the stay order. The case is now scheduled for 27.08.2024 to produce the order. In the meantime, no enquiry regarding the age of the accused has been conducted. However, the learned counsel for the accused submitted the birth certificate of

Accused No. 2, namely Muhammed Sahad, which shows the date of birth as 07.05.2007. At the time of filing the complaint, the complainant did not state the name of Accused No. 2; instead, it was mentioned that Accused No. 2 is the son of the first accused. During the enquiry, the complainant filed a memo showing the address of Accused No. 2, and this court was inclined to take cognizance of both accused by adding Accused No. 2 as per the memo and issuing summons. According to the complaint, the incident occurred on 17.09.2021. Considering the birth certificate, it is discernible that Accused No. 2 was a minor at the time of the alleged incident. It is further submitted that the said birth certificate does not show the address of the child or his parents. However, the name of the mother is shown as Fathima, which is similar to the name of Accused No. 1 in the above case. Therefore, this report is submitted for your kind consideration. It is submitted that this court could not conduct the enquiry about the age of Accused No. 2 due to the circumstances stated above. I request to be excused for the same.

6. Having considered, the facts of this case, it is discernible that the cognizance was taken against the accused after recording the statements of the complainant and another witness.

7. Going by the statements as well as the

averments in the complaint, the cognizance taken as against the 1st accused is justified. But, if the 2nd petitioner, who got arrayed as the 2nd accused, is a juvenile, the cognizance would require reconsideration by the learned Magistrate. The Magistrate reported that an enquiry would be conducted in this regard.

8. Accordingly, in view of the above discussion,

quashment of the proceedings as sought for, as against the 1st accused is liable to fail, permitting trial against the 1st accused. Regarding the cognizance taken as against the 2nd accused, the learned Magistrate is at liberty to go for an enquiry and decide the matter accordingly, as per law.

9. In the result, this petition stands disposed of as indicated above. Registry is directed to forward a copy of this

order to the trial court, within three days, for information

and further steps. Sd/- A. BADHARUDEEN JUDGE SK APPENDIX OF CRL.MC 496/2024

PETITIONER ANNEXURES : Annexure 1 A TRUE COPY OF THE C.M.P. NO. 1502 OF 2022 BEFORE THE HON'BLE JUDICIAL FIRST CLASS MAGISTRATE COURT,-II, KASARAGOD DATED 05.11.2021
Annexure 2 TRUE COPY OF DEPOSITION OF DEFACTO COMPLAINANT DATED 06.12.2022
Annexure 3 TRUE COPY OF DEPOSITION OF HUSBAND OF DEFACTO COMPLAINANT DATED 06.12.2022
Annexure 4 TRUE COPY OF THE NON-BAILABLE WARRANT ISSUED AGAINST 1ST PETITIONER
Annexure 5 TRUE COPY OF NON BAILABLE WARRANT ISSUED AGAINST 2ND

PETITIONER Annexure 6 TRUE COPY OF THE BIRTH CERTIFICATE
OF THE 2ND PETITIONER

RESPONDENTS ANNEXURES : NIL

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com