

Stanly Simon vs State of Kerala

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Court : Kerala

Decided On : Feb-20-2024

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : Crl.MC/1619/2024

Appellant : Stanly Simon

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS TUESDAY, THE 20TH DAY OF FEBRUARY 2024 / 1ST PHALGUNA, 1945 CRIME NO.510/2011 OF PATHANAMTHITTA POLICE STATION, PATHANAMTHITTA AGAINST THE ORDER/JUDGMENT CC 173/2012 OF CHIEF JUDICIAL MAGISTRATE PATHANAMTHITTA PETITIONERS/PETITIONERS/ACCUSED 1& 5 :

1 STANLY SIMON, AGED 37 YEARS S/O SIMON C. THOMAS, ASSANPARAMBIL HOUSE, PAZHAMPALAKKAD MURI, PAZHAMPALAKKAD VILLAGE, THAROOR-1, ALATHOOR TALUK, PALAKKADU DISTRICT., PIN - 678 544. 2 ZEENATH STANLY, AGED

42 YEARS W/O STANLY SIMON, ASSANPARAMBIL HOUSE, PAZHAMPALAKKAD MURI, PAZHAMPALAKKAD VILLAGE, THAROOR-1, ALATHOOR TALUK, PALAKKADU DISTRICT., PIN - 678 544. BY ADVS. K.N.RADHAKRISHNAN(THIRUVALLA) AMRUTHA KALYANI P.

RESPONDENT/RESPONDENT/STATE : STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682 031. SMT. SREEJA V. (PP) THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20.02.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: BECHU KURIAN THOMAS, J
..... Dated this the 20th day of February, 2024

ORDER

Petitioners are accused Nos. 1 and 5 in C.C.No.173/2012 on the files of the Chief Judicial Magistrate Court, Pathanamthitta, arising out of Crime No.510/2011 of Pathanamthitta Police Station, alleging offences punishable under Sections 406 and 420 r/w Section 34 of the Indian Penal Code, 1860 apart from Sections 10 and 24 of the Emigration Act, 1983.

2. The prosecution allegation is that, the nine accused persons

had cheated witnesses 2 to 4 by promising to provide them employment abroad after collecting money, and thereafter failed to arrange their visas and even refused to return the money, and thereby committed the offences alleged.

3. While the case is pending before the trial court, petitioners filed applications for dispensing with their personal presence, under Section 205 of Cr.P.C. Those

applications were dismissed by the learned Chief Judicial Magistrate, as per Annexure-A4 and Annexure-A5 orders. The reason for dismissal was stated to be the pendency of non- bailable warrants issued against them.

4. The pendency of a non bailable warrant by itself is not a reason

to deny the request for personal exemption. However, the learned Magistrate has given specific reasons for not allowing the exemption applications filed by the petitioners. I am of the view that there is no perversity in the impugned orders, which warrants interference under Section 482 of Cr.P.C.

5. In this context, this Court is aware that petitioners were granted

personal exemption in 30 other cases, and they are appearing through the counsel in those cases. This Court also notices that, in five cases, the learned Magistrate has refused to grant personal exemption. No reasons have also been stated by petitioners for seeking personal exemption, except that the first petitioner is suffering from throat cancer. However, the said claim is based on a certificate issued in 2020 and February 2023. There is nothing to indicate that the said illness continues even now, to the extent of disabling the first petitioner from appearing in

Court. Therefore, I am not satisfied that the impugned orders warrant interference.

6. Nevertheless, since the non-bailable warrants are pending against

the petitioners, it is directed that, if any applications for recall of warrant and for grant of bail, are filed by petitioners without delay, the learned Magistrate shall issue appropriate orders positively, on the date of appearance itself. It is also clarified that, notwithstanding the dismissal of the applications for personal exemption, the learned Magistrate will be at liberty to consider the application for dispensing with the personal appearance of the petitioners, if such applications are filed, after petitioners appear before the court and the warrants are recalled.

7. To enable the petitioners to appear before the trial court, as

directed above, coercive proceedings in C.C.No.173/2012 on the files of the Chief Judicial Magistrate Court, Pathanamthitta, shall be kept in abeyance for a period of 15 days from today. With the above observations, this CrI.M.C.is dismissed.

sd/- BECHU KURIAN THOMAS JUDGE AMV/24/02/2024 APPENDIX OF CRL.MC 1619/2024 PETITIONER ANNEXURES ANNEXURE 1 THE COPY OF FINAL REPORT IN C.C 173 /2012 OF THE FILE OF CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA DATED 14.09.2012. ANNEXURE 2 THE COPY OF MEDICAL CERTIFICATE DATED 30.09.2020 ISSUED FROM THE AMRUTHA INSTITUTE OF MEDICAL SCIENCE, ERNAKULAM. ANNEXURE 3 THE COPY OF MEDICAL CERTIFICATE DATED 07.02. 2023 ISSUED FROM THE AMRUTHA INSTITUTE OF MEDICAL SCIENCE, ERNAKULAM. ANNEXURE 4 THE CERTIFIED COPY OF ORDER IN CRL. MP NO. 836/2023 IN CC 173/2012 DATED 16.02.2023. ANNEXURE 5 THE CERTIFIED COPY OF ORDER IN CRL. MP NO. 835/2023 IN CC 173/2012 DATED 16.02.2023. TRUE COPY

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