

Sreelal vs the Excise Inspector

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Court : Kerala

Decided On : Jan-30-2023

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : Crl.MC/764/2023

Appellant : Sreelal

Respondent : The Excise Inspector

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN MONDAY,
THE 30TH DAY OF JANUARY 2023 / 10TH MAGHA, 1944 CRL.MC NO.
764 OF 2023 AGAINST THE ORDER/JUDGMENTCP 91/2017 OF
JUDICIAL MAGISTRATE OF FIRST CLASS , KAYAMKULAM SC
849/2018 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT -
III, MAVELIKKARA PETITIONER/S: SREELAL AGED 34 YEARS S/O
MOHANLAL, KOLLASHERIL VEEDU, GOVINDAMUTTOM
MURI,PUTHUPALLY VILLAGE, KARTHIKAPALLY TALUK , PIN -
686011 BY ADVS. JESSY S.SALIM SINDHU SANTHALINGAM
A.D.SHAJAN RESPONDENT/S: 1 THE EXCISE INSPECTOR
KAYAMKULAM RANGE OFFICE,KAYAMKULAM , PIN - 690502 2

VALSALA AGED 62 YEARS W/O MOHANLAL, KOLLASHERIL VEEDU, GOVINDAMUTTOM MURI, PUTHUPALLY VILLAGE, KARTHIKAPALLY TALUK , PIN - 686011 3 STATE OF KERALA REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 OTHER PRESENT: SR.PP.RENJITH GEORGE THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.01.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -2-

ORDER

Dated this the 30th day of January, 2023 Petitioner is the second accused in S.C.No.849 of 2018 on the files of the Assistant Sessions Court, Mavelikara. The petitioner's failure to appear before the trial court during two consecutive postings resulted in issuance of non-bailable warrant and cancellation of the bail granted. Hence, this CrI.M.C.

2. Learned Counsel for the petitioner

submitted that the petitioner's absence was not wilful. The petitioner's Counsel was suffering from viral fever and when the case was listed for trial on 09.01.2023, the Counsel filed Annexure II application along with medical certificate seeking adjournment of the trial. Unfortunately, on 10.01.2023, the trial court passed the impugned order, without taking note of the request made by the petitioner's Counsel. -3-

3. Learned Public Prosecutor submitted that

the non-bailable warrant issued against the petitioner was returned with an endorsement that he is absconding and hence, the trial court was justified in cancelling the bail.

4. No doubt, absence of the accused without

acceptable reasons can result in the trial court issuing non-bailable warrant and cancelling the bail. But in the instant case, the Counsel for the petitioner had filed

an application for adjournment supported by a medical certificate. That necessarily indicates that omission to file application for exempting the petitioner from personal appearance was due to the Counsel being unwell.

5. Taking into consideration the above fact

and the submission made on behalf of the petitioner that, henceforth, he will appear before the trial court without fail, I am inclined to allow the Crl.M.C. -4- In the result, Crl.M.C. Is allowed. Annexure III order dated 10.01.2023 in S.C.No.849 of 2018 on the files of the Assistant Sessions Court, Mavelikara is quashed. Consequently, the non- bailable warrant issued against the petitioner will stand recalled. It is made clear that this order does not prevent the learned Sessions Judge from cancelling the petitioner's bail, if he again fails to appear without sufficient reason. Sd/- V.G.ARUN JUDGE Scl/ -5- APPENDIX OF CRL.MC 764/2023 PETITIONER ANNEXURES Annexure I A TRUE COPY OF THE FINAL REPORT IN CR

NO. 52/15 OF THE EXCISE RANGE OFFICE, KAYAMKULAM PRODUCED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT- I, KAYAMKULAM Annexure II CERTIFIED COPY OF THE AFFIDAVIT RECEIVED FROM THE REGISTRY ON PETITIONER SHRI. VINU VARGHESE KACHAPPILLY BEFORE THE HON'BLE ASSISTANT SESSIONS COURT, MAVELIKARA Annexure II(a) CERTIFIED COPY OF THE MEDICAL CERTIFICATE DTD. 7/1/2023 OF THE DR. ASHA P S. Annexure III A TRUE COPY OF THE ORDER DTD. ASSISTANT SESSIONS COURT, MAVELIKARA

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