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**Labeeb vs State of Kerala**

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**SooperKanoon Citation** : sooperkanoon.com/1360835

**Court** : Kerala

**Decided On :** May-30-2023

**Judge** : Honourable Mr. Justice Raja Vijayaraghavan V

**Appeal No.** : Crl.MC/3897/2023

**Appellant** : Labeeb

**Respondent** : State of Kerala

**Judgement** :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V TUESDAY, THE 30TH DAY OF MAY 2023 / 9TH JYAISHTA, 1945 CRL.MC NO. 3897 OF 2023

## ORDER IN CRL.M.P No.3077/2023 IN CP 47/2021 OF JUDICIAL

MAGISTRATE OF FIRST CLASS ,IRINJALAKUDA PETITIONER/PETITIONER/ACCUSED NO.7: LABEEB AGED 33 YEARS S/O. ABDUL KHADER, THARUPEEDIKAYIL HOUSE, PALLEPPADOM, KOTTANALLUR, THRISSUR, PIN - 680655 BY ADV V.A.JOHNSON (VARIKKAPPALLIL) RESPONDENT/RESPONDENT & COMPLAINANT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF

KERALA, ERNAKULAM, PIN - 682031 SRI MP PRASHANTH, PUBLIC PROSECUTOR THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.05.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: Crl.M.C No.3897 of 2023 2

## ORDER

The petitioner herein is the 7th accused in C.P No.47 of 2021 on the

files of the Judicial Magistrate of the First Class, Irinjalakkuda. While the proceedings were pending before the learned Magistrate at the committal stage, an application was filed by the petitioner seeking permission to go to Dubai for a period of two years and also to apply for re-issuance of passport for the said period. By Annexure-1 order dated 21.12.2022 in Crl.M.P No.9199 of 2022, the learned Magistrate, after considering the law laid down by this Court in Thadevoose Sebastian v. Regional Passport Office and another (2021 (5) KHC 625) permitted the petitioner to go abroad for a period of two years from the date of issuance of the order and also to apply for a passport for the said period and various other conditions were also imposed.

2. It appears that the petitioner was not in a position to apply for

re-issuance of passport as his old passport was surrendered pursuant to the directions issued by this Court in BA No.5711/2021. In the said circumstances, the petitioner approached this Court and filed Crl.M.A No.1/2023 in BA No.5711/2021, and by order dated 31.01.2023, this Court Crl.M.C No.3897 of 2023 3 had directed the JFMC, Irinjalakkuda, to release the old passport subject to conditions. This Court had also ordered that on surrender of the passport after renewal, the petitioner can seek for release of the passport in accordance with law.

3. In terms of the directions issued by this Court, the petitioner

submitted a fresh application as Crl.MP No.3077 of 2022. However, the learned Magistrate, taking note of the fact that the case is exclusively triable by a Court of Session and the case has not yet been committed to the court, declined to take a decision on the application. Being aggrieved, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submitted that

further investigation was ordered, and a further investigation report was submitted before the court. However, as the report was defective, the same was returned by the learned Magistrate. It is submitted that, to-date, a fresh report has not been submitted before the jurisdictional court. The learned counsel submits that there would be undue delay in committing the matter to the Court of Session, and it is urged that there is no justification on the part of the learned Magistrate in dismissing the application.

5. In view of the submission of the learned counsel, the Registry Crl.M.C No.3897 of 2023 4

was directed to obtain a report from the learned Magistrate as regards the delay in committal, as to whether any further investigation is pending, and the time frame within which the case is likely to be committed. In terms of the directions issued by this Court, a report has been submitted by the learned Magistrate on 27.05.2023. The report reads as under:

> CP No.47/2021 on the file of this court arose out of Crime No.146/2021 of Kodakara Police Station alleging commission of offences punishable under Sections 395, 412, 212, 120B, 201, 427 of the Indian Penal Code. On 24.09.2021, this court received a report to keep the further proceedings in abeyance due to the ongoing further investigation, and consequently, committal proceedings were kept in abeyance. Later, on 26.11.2021, a further investigation report was received by the court, however, the same was returned by this court after verification on 18.01.2023 for the same being incomplete, as the charge sheet submitted after further investigation was not in a proper format only showing an additional accused along with an additional witness list. It is humbly submitted that, to date, the final report after further investigation is not re-submitted after curing the defects noted. Now the case stands posted to 05.06.2023 awaiting further investigation report. As the charge sheet after further investigation has not been resubmitted after

addressing the defects, this court could not commit the case to the Honble Sessions Court for trial. It is humbly submitted that once a proper final report is received by this court, the case will be committed without any delay to the Honble Sessions Court for trial.

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6. From the report, it appears that the case now stands posted to

05.06.2023, and a further investigation report is awaited. In that view of the matter, as proceedings are pending before the learned Magistrate, necessary directions can be issued to the learned Magistrate to reconsider the same and take a decision so that the petitioner would be in a position to eke out a livelihood. Resultantly, this petition is disposed of by ordering as under: a) Annexure-3 will stand quashed. b) There will be a direction to the learned magistrate to reconsider the matter and pass fresh orders expeditiously, in any event, within three weeks from the date of production of a copy of this order.

c) The learned Magistrate will be free to impose appropriate conditions to ensure his appearance before the court in case the situation so warrants. This petition is disposed of. Sd/- RAJA VIJAYARAGHAVAN V, JUDGE IAP Crl.M.C No.3897 of 2023 6 APPENDIX OF CRL.MC 3897/2023 PETITIONERS ANNEXURES: Annexure1 TRUE COPY OF THE ORDER IN

CRL.M.P.NO.9199/2022 IN C.P.NO.47/2021 OF THE COURT OF JUDICIAL MAGISTRATE OF FIRST CLASS, IRINJALAKKUDA DATED 21.12.2022 Annexure2 TRUE COPY OF THE ORDER IN CRL.M.A.NO.1/2023 IN B.A.NO.5711/2021 OF THIS HON'BLE COURT DATED 31/1/2023 Annexure3 COPY OF THE ORDER IN CRL.M.P.NO.3077/2023 IN C.P.NO.47/ 2021 OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, IRINJALAKKUDA DATED 25.04.2023

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