

Stanly Simon vs State of Kerala

Stanly Simon vs State of Kerala

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Court : Kerala

Decided On : Sep-11-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/7091/2023

Appellant : Stanly Simon

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
MONDAY, THE 11TH DAY OF SEPTEMBER 2023 / 20TH BHADRA,
1945 CRL.MC NO. 7091 OF 2023 AGAINST THE ORDER/JUDGMENT
CC 120/2012 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 - 678544 2 ZEENATH STANLY AGED 42
YEARS W/O STANLY SIMON, ASSANPARAMBIL HOUSE,

PAZHAMPALAKKAD MURI, PAZHAMPALAKKAD VILLAGE,
THAROOR-1, ALATHOOR TALUK, PALAKKADU DISTRICT, PIN -
678544 BY ADVS. K.N.RADHAKRISHNAN(THIRUVALLA)
K.N.RADHAKRISHNAN(THIRUVALLA)

RESPONDENT/STATE: STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY
ADV.SRI.VIPIN NARAYAN, PP THIS CRIMINAL MISC. CASE HAVING
COME UP FOR ADMISSION ON 11.09.2023, ALONG WITH
Crl.MC.7102/2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
MONDAY, THE 11TH DAY OF SEPTEMBER 2023 / 20TH BHADRA,
1945 CRL.MC NO. 7102 OF 2023 AGAINST THE ORDER/JUDGMENT
CC 154/2012 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 - 678544 2 ZEENATH STANLY AGED 42
YEARS W/O STANLY SIMON, ASSANPARAMBIL HOUSE,
PAZHAMPALAKKAD MURI, PAZHAMPALAKKAD VILLAGE,
THAROOR-1, ALATHOOR TALUK, PALAKKADU DISTRICT, PIN -
678544 BY ADVS. K.N.RADHAKRISHNAN(THIRUVALLA)
K.N.RADHAKRISHNAN(THIRUVALLA)

RESPONDENT/STATE: STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 BY
ADV.SRI.VIPIN NARAYAN, PP THIS CRIMINAL MISC. CASE HAVING
COME UP FOR ADMISSION ON 11.09.2023, ALONG WITH

Crl.MC.7091/2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Crl.M.C. Nos. 7102 & 7091 of 2023
----- Dated this the 11th day of September,
2023

ORDER

These Criminal Miscellaneous Cases are filed under Section 482 of the Code of Criminal Procedure, 1973 (the Code for the sake of brevity).

2. The petitioners in these cases are same and

they are accused nos.1 and 5 in C.C. No.154/2012 and C.C. No.120/2012 on the files of Chief Judicial Magistrate Court, Pathanamthitta. The Crl.M.C. No.7102/2023 is filed with a prayer to quash Annexure 4 and 5 orders in Crl.M.P. Nos.212 & 213 of 2023 dated 12.01.2023 in C.C. No.154/2012 on the files of Chief Judicial Magistrate Court, Pathanamthitta. The Crl.M.C. No.7091/2023 is filed to quash Annexure-A4 and A5 orders in Crl. M.P. Nos.609 and 608 of 2023 dated 02.02.2023 in C.C. No.120/2012 on the files of Chief Judicial Magistrate Court, Pathanamthitta.

3. The petitioners are accused and they filed

application under Section 205 of Cr.P.C. seeking exemption from personal appearance. It is stated that the 1st petitioner is a cancer patient and undergoing treatment and the 2nd petitioner is the wife of the 1st petitioner and she is looking after the 1st petitioner. It is submitted that the learned Magistrate dismissed the exemption application in Crl. M.C. No.7091/2023 for the reason that a warrant is pending against the petitioner in the connected case. The same is challenged in Crl. M.C. No.7102/2023 in which also an application for exemption is submitted and the same is rejected. Hence, this Crl. M.C. is filed.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

5. The petitioners approached this Court

earlier by filing CrI.M.C. No.6973/2023 and 1652/2023 etc. in which also the petitioners prays for permanent exemption in appearing in the cases pending before the Chief Judicial Magistrate Court, Pathanamthitta. It will be better to extract the relevant portion of the

order dated 25.08.2023 in CrI. M.C. No.6973/2023:

6. I find that a learned single judge of this Court has considered identical issues while disposing of CrI.M.C.No.1874 of 2023 and connected cases. This Court, after taking note of the law laid down in Bhanujan v. Jayabhanu [1993 (2) KLT 889], M/s. Bhaskar Industries Ltd. v. Bhiwani Denim and Apparels Ltd. and Others [AIR 2001 SC 3625], Sarath v. State of Kerala [2017 (3) KLT 95] and Moosa Pattupura v. State of Kerala [2022 (2) KHC 293] had

occasion to hold that that Section 317(1) Cr.P.C. empowers the Judge or Magistrate to dispense with the personal attendance of the accused and proceed with the trial in his absence. This Court further observed that ordinarily, the Court should be generous and liberal under Section 205 and Section 317 of Cr.P.C. and grant exemption to the accused from personal appearance unless the presence is imperatively needed or becomes indispensable. The same view was taken by this Court in CrI.M.C. No.2951 of 2023 as well. In that view of the matter, following the directions issued by this Court in CrI.M.C.Nos.1684 of 2023 and CrI.M.C. No.2951 of 2023, these petitions are allowed by ordering as under. a) The order dated 12.1.2023 in CrI.M.P. No.439/2023 in C.C.No.110/2012 and order dated 02.02.2023 in CrI.M.P. No.616/2023 in C.C.No.130/2012 on the files of the Chief Judicial Magistrate Court, Pathanamthitta are set aside. b) The petitioners are granted permanent exemption from appearance under Section 205(1) of the Cr.P.C and shall be represented

by their Counsel at the time of trial. c) The petitioners shall file affidavits in tune with the directions in M/s.Bhaskar Industries Limited

(supra). d) Petitioners shall appear before the Court at the time of questioning under Section 313 Cr.P.C as well as on the date of judgment, and the exemption granted as above shall not be applicable in view of the undertaken given by the petitioner. It is made clear that Subsection 205(2) shall always apply, and if the presence of the petitioners is otherwise required, it would be open to the Magistrate to insist on their appearance, however, subject to the orders above. e) It is reiterated that the exemption granted as above shall be subject to a further direction that the petitioners shall appear if they are so otherwise directed by the court trying the matter.

Following the above directions issued by this Court, these Criminal Miscellaneous Cases are disposed of with the following directions; a. The impugned order in Crl.M.C. No.7091/2023 and Crl.M.C. No.7102/2023 are quashed. b) The petitioners are granted permanent exemption from appearance under Section 205(1) of the Cr.P.C and shall be represented by their Counsel at the time of trial. c) The petitioners shall file affidavits in tune with the directions in M/s.Bhaskar Industries Limited (supra). d) Petitioners shall appear before the Court at the time of questioning under Section 313 Cr.P.C as well as on the date of judgment, and the exemption granted as above shall not be applicable in view of the undertaken given by the petitioner. It is made clear that Subsection 205(2) shall always apply, and if the presence of the petitioners is otherwise required, it would be open to the Magistrate to insist on their appearance, however, subject to the orders above. e) It is reiterated that the exemption granted as above shall be subject to a further direction that the petitioners shall appear if they are so otherwise directed by the court trying the matter. Sd/- P.V.KUNHIKRISHNAN nvj JUDGE APPENDIX OF CRL.MC 7102/2023 PETITIONER ANNEXURES Annexure 1 THE COPY OF FINAL REPORT IN C.C 154 /2012 OF THE FILE OF CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA DATED 24.08.2012 Annexure 2 THE COPY OF MEDICAL CERTIFICATE DATED 30.09.2019 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. 212/2023 IN CC 154/2012 DATED 12.01.2023 Annexure 5 THE CERTIFIED COPY OF ORDER IN CRL. MP NO. 213/2023 IN CC 154/2012 DATED 12.01.2023 APPENDIX OF CRL.MC 7091/2023 PETITIONER ANNEXURES Annexure 1 THE COPY OF FINAL REPORT IN C.C 120 /2012 OF THE FILE OF CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA DATED 10.08.2012 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. 609/2023 IN CC 120/2012 DATED 02.02.2023 Annexure 5 THE CERTIFIED COPY OF ORDER IN CRL. MP NO. 608/2023 IN CC 120/2012 DATED 02.02.2023 RESPONDENTS EXHIBITS :NIL //TRUE COPY// PA TO JUDGE

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