

Usman Aboobacker vs State of Kerala

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Court : Kerala

Decided On : Nov-03-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : OP(Crl.)/838/2023

Appellant : Usman Aboobacker

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
FRIDAY, THE 3RD DAY OF NOVEMBER 2023 / 12TH KARTHIKA, 1945
OP(CRL.) NO. 838 OF 2023 AGAINST THE ORDER IN CRA 296/2023
OF ADDITIONAL DISTRICT & SESSIONS COURT, MUVATTUPUZHA
ST 1231/2018 OF JUDICIAL FIRST CLASS MAGISTRATE COURT,
PIRAVOM PETITIONER/APPELLANT/ACCUSED: USMAN
ABOOBACKER, AGED 51 YEARS S/O ABOOBACKER,
KARIYAMBATH HOUSE, PULLOKARA PO, CHOKLI, THALASSERY, PIN
- 670678 BY ADV K.REEHA KHADER RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 SHO,
CHOKLI POLICE STATION, PIN - 670672 3 SUBHAGHAN, AGED 71
YEARS, S/ RAGHAVAN,KAVUNGAL HOUSE,MARITHAZHAM PO, PIN
- 682315 OTHER PRESENT: SRI.M.P.PRASANTH, PP THIS OP
(CRIMINAL) HAVING COME UP FOR ADMISSION ON 03.11.2023, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING: O.P(CrI)
838/2023 2

P. V. KUNHIKRISHNAN, J.

O.P(CrI). No.838 of 2023 Dated this the 3rd day of November, 2023

JUDGMENT

The petitioner was convicted by the Judicial First Class Magistrate Court, Piravom in S.T.No.1231/2018. The petitioner filed an appeal before the Additional District & Sessions Court, Muvattupuzha along with a delay condonation petition. In the delay petition, notice is ordered by the appellate court and the appeal is posted for return of notice. In the meanwhile, the petitioner was arrested based on the execution warrant. The prayer in this Original Petition is to release the petitioner on bail till the suspension petition is considered by the appellate court.

2. Heard counsel for the petitioner and the Public Prosecutor. No notice is necessary to the complainant because of the way in which this Original Petition is going to be disposed of.

3. It is an admitted fact that the petitioner was convicted

and sentenced by the trial court and an appeal is filed with delay O.P(CrI) 838/2023 3 condonation petition. It is also an admitted fact that, based on the execution warrant, the petitioner is arrested and he is undergoing the sentence. It is also an admitted fact that the petitioner was convicted under section 138 of the Negotiable Instruments Act.

4. Considering the facts and circumstances of the case and

in the interest of justice, I think, the sentence can be suspended by this Court invoking the extraordinary jurisdiction under Article 227 of the Constitution for a period of two months on condition that the petitioner will deposit 20% of the fine amount before the trial court. Therefore, this O.P(CrI.) is disposed of with the following directions:

- a) The sentence imposed on the petitioner is suspended for a period of two months on condition that the petitioner will execute a bond for Rs.50,000/- [Rupees Fifty Thousand Only] with two solvent sureties to the like sum each to the satisfaction of the trial court. The petitioner will also pay 20% of the fine amount before the trial court. If the bond is executed and the amount is paid, the petitioner shall be released on bail.
- b) The Additional District & Sessions Court, Muvattupuzha will dispose the delay petition and the suspension petition in the criminal appeal filed by the petitioner as expeditiously as possible.

O.P(CrI) 838/2023 4 c) I make it clear that the Sessions Court is free to pass appropriate orders in the delay petition and suspension petition in accordance to law untrammelled by any observation in this judgment. Sd/- P. V. KUNHIKRISHNAN JUDGE Sbna/

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