

Binu Augustine vs State of Kerala

Binu Augustine vs State of Kerala

SooperKanoon Citation : sooperkanoon.com/1404476

Court : Kerala

Decided On : Dec-12-2023

Judge : Honourable Mr. Justice P.V.Kunhikrishnan

Appeal No. : Crl.MC/9492/2023

Appellant : Binu Augustine

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN
TUESDAY, THE 12TH DAY OF DECEMBER 2023 / 21ST
AGRAHAYANA, 1945 CRL.MC NO. 9492 OF 2023 AGAINST THE
ORDER/JUDGMENT MC 638/2022 OF CHIEF JUDICIAL
MAGISTRATE, KOTTAYAM PETITIONER(S)/RESPONDENTS 1,3,5 &
6: 1 BINU AUGUSTINE AGED 52 YEARS, S/O. LATE AUGUSTINE
JOSEPH, 2 ALEX AUGUSTINE AGED 42 YEARS, S/O. LATE
AUGUSTINE JOSEPH, 3 MINI AUGUSTINE AGED 49 YEARS, D/O.
LATE AUGUSTINE JOSEPH, 4 BIJU AUGUSTINE AGED 47 YEARS,
S/O. LATE AUGUSTINE JOSEPH, BY ADVS. GEORGE MATHEW
M.D.SASIKUMARAN ELSA DENNY PINDIS SUNIL KUMAR A.G

MATHEW K.T. GEORGE K.V. STEPHY K REGI MEDHA B.S.
RESPONDENT(S)/STATE, PETITIONERS & RESPONDENTS 2 & 4:

1 STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR,HIGH COURT OF KERALA, PIN - 682031 2 THE
SOUTH INDIAN BANK LTD REGIONAL OFFICE AT REGENCY
SQUARE, K.K. ROAD, COLLECTORATE P.O., KOTTAYAM, PIN -
686002 3 HONEY BINU AGED 43 YEARS, W/O. BINU AUGUSTINE, 4
CINI AUGUSTINE AGED 45 YEARS, D/O. LATE AUGUSTINE JOSEPH,
BY ADVS. SRI. SUNIL SHANKAR SC FOR SOUTH INDIAN BANK SRI.
SANAL P RAJ, PP SMT. VIDYA GANGADHARAN(K/000424/2020)

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 12.12.2023, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

P.V.KUNHIKRISHNAN, J.

----- Crl.M.C. No.9492 of 2023
----- Dated this the 12th day of December, 2023

ORDER

This Criminal Miscellaneous Case is filed with the following prayers; to quash
Annx.A4 order dtd. 04.11.2023 in M.C. No.638 of 2022 of the Chief Judicial
Magistrates Court, Kottayam, to meet the ends of justice.

2. When this Crl.MC came up for consideration, on 09.11.2023, this Court passed
the following order; Admit.

2. The Public Prosecutor takes notice for the

1st respondent. Adv.Sunil Sankar takes notice for the 2nd respondent. The
counsel for the petitioners submitted that the respondents 3 and 4 are formal
parties.

3. Admittedly, SARFAESI proceeding is

initiated against the petitioners. The petitioners have to challenge the proceedings before the appropriate court. Therefore, the petitioners have to take appropriate steps in accordance with law. To facilitate the petitioners to do the needful, taking physical dispossession of the petitioners property shall be deferred for a period of 30 days.

4. The Registry will get a report from the

Chief Judicial Magistrate Court, Kottayam about the order dated 04.11.2023 in M.C.No.638/2022, in which, it is stated that the order of the Sub Court, Pala will no way affect or is having an overriding effect on the order passed by the Chief Judicial Magistrate. The circumstances by which such an order is passed should be explained. Post along with the report on 23.11.2023.

3. It will be beneficial to extract Annexure- A4 order passed by the Chief Judicial Magistrate, Kottayam;

Petitioner is represented. Commissioner is represented. R5 represented. Commissioner produced copy of injunction order of the Sub Court, Pala restraining the petitioner bank from evicting the respondents. The said order will in no way affect or is having an overriding effect on the

order passed by this Court in the above MC.

Hence, the commissioner is directed to execute the warrant and file commission report forthwith. Call on 10.11.2023.

4. Thereafter, when the matter came up for

consideration on 23.11.2023, the case is posted to today. A report is received from the Chief Judicial Magistrate, Kottayam as directed by this Court. In the report it is stated like this;

On 04.11.2023, the commissioner produced a copy of injunction order in IA. 1/23 in CMA 18/23 dated 12.09.2023 of the Sub Court, Pala restraining the authorized officer of the petitioner bank from evicting the respondents from the plaint schedule property until further orders saying that in view of the injunction order, he could not take possession of the secured asset. Then, in view of S.34 and 35 of the SARFAESI Act and the decisions in Muhammad Rafeeq & Another vs. Bank of Baroda and Another reported in 2010 (1) KLJ 605 and Sasi and Another Vs.

Housing Development Finance Corporation Ltd. and Others reported in 2010(3) KLJ 154, as well as the fact that the petitioner bank/respondent in the Crl.MA is attempting to take possession of the secured asset from the respondents under due process of law through the commissioner deputed by this court, the order under reference in the Crl. M.C pending before the Hon'ble High Court of Kerala was passed by this court. This is most humbly submitted for kind perusal in obedience to the direction of the Hon'ble High Court of Kerala in the Order under reference.

5. When orders are passed by one court

and produced it in another court, a judicial discipline is necessary while dealing the same. When the civil court order is produced before the Chief Judicial Magistrate in this case, I am dissatisfied the way in which the learned Chief Judicial Magistrate Court dealt with the same. The orders of the civil court may be wrong or void or may not be having overriding effect to another courts orders. There are superior courts to correct it. Anyway, I leave it there.

6. In the order dated 09.11.2023, itself this

Court clearly stated that SARFAESI proceedings is initiated against the petitioner and the petitioner has to challenge the proceedings before the appropriate court. Only to facilitate the petitioner to approach the appropriate authority, this Court stayed the dispossession for 30 days. That period is already over. No further extension can be passed by this Court in the light of the decision of the Supreme

Court in M/s. Phoenix ARC Pvt.Ltd. vs. B. Ganesh Moorthi and another SLP Nos.22093-22094 of 2022. Therefore, this Criminal Miscellaneous Case is dismissed. Sd/- P.V.KUNHIKRISHNAN nvj JUDGE APPENDIX OF CRL.MC 9492/2023 PETITIONER ANNEXURES ANNEXURE A1 TRUE COPY OF NOTICE DTD. 07.05.2022 ISSUED BY AUTHORISED OFFICER FOR 2ND RESPONDENT ANNEXURE A2 TRUE COPY OF ORDER DTD. 24.08.2023 IN I.A. NO. 1 OF 2022 IN O.S. NO. 213 OF 2022 OF THE MUNSIFF'S COURT, ERATTUPETTA ANNEXURE A3 TRUE COPY OF ORDER DTD. 12.09.2023 IN I.A. NO. 1 OF 2023 IN C.M.A. NO. 18 OF 2023 OF THE SUBORDINATE JUDGE'S COURT, PALA ANNEXURE A4 CERTIFIED TRUE COPY OF ORDER DTD. 04.11.2023 IN M.C. NO. 638 OF 2022 OF THE CHIEF JUDICIAL MAGISTRATE'S COURT, KOTTAYAM RESPONDENT ANNEXURES ANNEXURE R2(A) THE TRUE COPY OF STAY PETITION IA NO.2507 OF 2023 ANNEXURE R2(B) TRUE COPY OF DECLARATION DATED

29.03.2019EXECUTED BY 1ST PETITIONER AS POWER OF ATTORNEY OF 2ND PETITIONER IS PRODUCED HERewith AND MARKED AS ANNEXURE R2(B)

ANNEXURE R2(C) TRUE COPY OF DECLARATION DATED

HERewith AND MARKED AS ANNEXURE R2(C). RESPONDENTS EXHIBITS :NIL //TRUE COPY// PA TO JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com