

Basheer vs State of Kerala

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Court : Kerala

Decided On : Dec-22-2023

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : Crl.MC/11228/2023

Appellant : Basheer

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. FRIDAY,
THE 22ND DAY OF DECEMBER 2023 / 1ST POUSHA, 1945 CRL.MC
NO. 11228 OF 2023 CRIME NO.431/2016 OF Nattukal Police Station,
Palakkad AGAINST THE ORDER/JUDGMENT SC 379/2017 OF
SPECIAL COURT-TRIAL OF OFFENCE UNDER SC/ST(POA)ACT1989,
MANNARKKAD PETITIONER/PETITIONER/ACCUSED NO.1:
BASHEER, AGED 40 YEARS S/O MUHAMMED @ MAMMU,
PADINJARETHIL HOUSE, THOTTARA, KARIMPUZHA P.O,
OTTAPPALAM TALUK, PALAKKAD DISTRICT., PIN - 679513 BY
ADVS. P.MOHAMED SABAH LIBIN STANLEY SAIPOOJA SADIK
ISMAYIL R.GAYATHRI M.MAHIN HAMZA ALWIN JOSEPH

RESPONDENT/STATE AND COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 2 THE STATION HOUSE OFFICER NATTUKAL POLICE STATION, PALAKKAD DISTRICT,, PIN - SRI. NOUSHAD K.A. (SR PP) THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 22.12.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CRL.MC NO. 11228 OF 2023
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ORDER

Petitioner has approached this Court, challenging Annexure-4 order, dismissing an application filed by the petitioner under Section 309 Cr.P.C, for adjournment of trial in S.C. No.379 of 2017.

2. It appears from the records that an earlier application

filed by the petitioner for the same relief was dismissed by the Sessions Court, against which, the petitioner approached this court by filing O.P.(Crl.) No.937/2023, which was disposed of by Annexure 2 judgment, directing as follows:- The petitioner is free to file a petition before the trial court for adjourning cross examination for a short period and if such a petition is filed, the trial court will consider the same and pass appropriate orders in accordance with law. The petitioner thereafter, again filed an application under Section 309 Cr.P.C, for adjournment of trial.

3. Learned counsel appearing for the petitioner would

submit that the petitioner had engaged a new lawyer on 16.12.2023 and the said lawyer requires some time to prepare for the trial. It is submitted that, it is in such circumstances that a second application under Section 309 Cr.P.C, for adjournment of trial, was filed. It is submitted that, it is clear from the CRL.MC NO. 11228 OF 2023 3

judgment of this Court in Crl.M.C. No.9209/2023 that

convenience of the lawyer has also to be taken into consideration while scheduling trial.

4. Having heard the learned counsel appearing for the

petitioner and the learned Public Prosecutor, I am not inclined to interfere with Annexure- 4 order since an earlier application filed under Section 309 Cr.P.C was rejected by the trial court and when that order was challenged before this Court, the only relief granted by this Court was that the petitioner can ask for some time for cross examination. The learned Sessions Judge was, therefore, right in rejecting the application for adjournment. However, this Court has already been permitted the petitioner to seek some time for cross examination, it is made clear that if the petitioner files any application/or makes a request seeking for some time for cross examining the witnesses, the court shall consider the same, on merits. The Crl.M.C is disposed of as above. Sd/- GOPINATH P. JUDGE ajt CRL.MC NO. 11228 OF 2023 4 APPENDIX OF CRL.MC 11228/2023 PETITIONER ANNEXURES Annexure 1 TRUE COPY OF THE PROCEEDINGS DATED 03.11.2023 PUBLISHED IN THE OFFICIAL WEBSITE OF E- COURTS IS Annexure 2 TRUE COPY OF THE JUDGMENT DATED 07.12.2023 IN OP (CRL) NO. 937/2023 PASSED BY THIS HON'BLE COURT Annexure 3 TRUE COPY OF THE CRLMP NO. 2178/2023 FILED BY THE PETITIONER BEFORE THE TRIAL COURT Annexure 4 TRUE COPY OF THE ORDER DATED 18.12.2023 IN CRLMP NO. 2178/2023 PASSED BY THE SPECIAL COURT FOR SC/ST (POA) ACT, MANNARKKAD

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