

Bunashkhan @ Achu, vs State of Kerala,

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Court : Kerala

Decided On : Feb-02-2022

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : Crl.MC/153/2022

Appellant : Bunashkhan @ Achu,

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
WEDNESDAY, THE 2ND DAY OF FEBRUARY 2022 / 13TH MAGHA,
1943 AGAINST THE ORDER/JUDGMENT IN CRMP 2581/2021 OF
DISTRICT & SESSIONS COURT, ALAPPUZHA CRIME NO.90/2021 OF
VALLIKUNNAM POLICE STATION, ALAPPUZHA.
PETITIONER/ACCUSED NO.1: BUNASHKHAN @ ACHU, AGED 28
YEARS S/O. THAJUDEEN, BISMINA MANZIL, MANJADITHARA MURI,
BHARANIKKAVU VILLAGE, (FROM KOTTAYIL VEEDU, ERUVA MURI).
BY ADVS. K.SASIKUMAR S.ARAVIND P.S.RAGHUKUMAR
RESPONDENT/STATE: STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, KOCHI 31.

OTHER PRESENT: PP SRI SANAL P RAJ THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02.02.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

This is an application filed under Section 482 of the Code

of Criminal Procedure, 1973 (for short the Cr.P.C.) seeking to set aside an order passed by the Court of Sessions, Alappuzha on 23.12.2021, copy of which is produced alongwith as Annexure A4. The order assailed was passed in CrI.M.P. No. 2581/2021 in Crime No.90/2021 of Vallikunnam Police Station, Alappuzha. The application was filed by the investigating officer seeking for extension of period for completion of investigation and period of detention of accused No.1 in the crime for a period of one year under Section 36 A (4) of Narcotic Drugs and Psychotropic

Substances Act, 1985 (for short the NDPS Act). The 1 st accused is the counter petitioner in the application.

2. The application was allowed by the Court and time was extended beyond the period of 180 days. The court below failed to state in the impugned order the time extended for

conclusion of investigation and custody. As per the provision the

court can extend the time upto one year beyond 180 days on being convinced from the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond 180 days.

3. The learned Public Prosecutor has contended that

though the application was filed by the investigating officer, it was signed by the Public Prosecutor and therefore compliance of the direction in the provision is met with.

4. It is pertinent to note that such a context is not

contemplated by the provision. As per the provision, the Public Prosecutor has to file a report indicating the progress of the investigation and stating the specific reasons warranting the detention of the accused beyond 180 days.

5. In the case on hand an application was filed by the

investigating officer. The progress of the investigation is not stated. What is contemplated under Sub-Section (4) of Section 36A is a report. Instead of that, an application is filed, that too by the investigating officer who was not authorised by the provision. The court also failed to state in the order the time granted in extension. As per the provision court can extend the period upto one year, beyond 180 days. Therefore, the direction in the provision is violated. The impugned order being passed in an application filed by an incompetent person is illegal and is only to be set aside.

In the result, Crl.M.C is allowed and the impugned order is set aside reserving liberty to the Prosecutor concerned to file a report as mandated by the provision.
Sd/- MARY JOSEPH JUDGE al/- APPENDIX OF CRL.MC 153/2022 PETITIONER ANNEXURES Annexure A1 A TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE CONSULTANT ORTHOPEDIC SURGEON AND HEAD OF THE DEPARTMENT OF ORTHOPEDIC SURGERY, MEDICAL TRUST HOSPITAL, COCHIN DATED 8.3.2021.

Annexure A2 A TRUE COPY OF THE PETITION FILED BY THE INVESTIGATION OFFICER BEFORE THE HON'BLE SESSIONS COURT, ALAPPUZHA DATED 2.12.2021. Annexure A3 A TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN CRL.M.C. NO. 2141/2013. Annexure A4 A TRUE COPY OF THE ORDER PASSED BY THE HON'BLE SESSIONS COURT, ALAPPUZHA IN CRL.M.P NO. 2581/2021 DATED 23.12.2021.

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