

Mary vs State of Kerala

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Court : Kerala

Decided On : Jul-21-2022

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : Crl.MC/590/2020

Appellant : MARY

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
THURSDAY, THE 21ST DAY OF JULY 2022 / 30TH ASHADHA, 1944
AGAINST THE ORDER/JUDGMENT IN CC 225/2015 OF JUDICIAL
FIRST CLASS MAGISTRATE COURT, TRIPUNITHURA
PETITIONER/RESPONDENT NO.2/ACCUSED NO.2: MARY AGED 53
YEARS W/O ANTONY, VADAKKE KURIKAYIL HOUSE, NORTH OF
PADIPPURA TODDY SHOP, PATHAM MILE, UDAYAMPEROOR,
MANAKKUNNAM VILLAGE, ERNAKULAM DISTRICT. ANIL
K.MOHAMMED SRI.BENNY M.JOHN SRI.V.S.MANSOOR SMT.BINU
K.B. RESPONDENT/PETITIONER/COMPLAINANT: 1 STATE OF
KERALA REPRESENTED BY THE S.I. OF POLICE, UDAYAMPEROOR

REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA PIN - 682031 **2 VIJI R., AGED 35 YEARS, D/O VIJAYAN INDEEVARAM, VALIYAKULAM, UDAYAMPEROOR, THRIPIUNITHURA ERNAKULAM DIST. **ADDL.R2 IS IMPEADED AS PER ORDER IN CRL.M.A.NO.1/2022 DATED 21.07.2022 IN CRL.M.C.NO.590/2020 V.K.BALACHANDRAN DRISHYA K.PRAKASH SRI P G MANU-SR PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 21.07.2022, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: -2-

JUDGMENT

This Crl.M.C.has been filed challenging Annexure C order passed by the Judicial First Class Magistrate, Tripunithura in C.M.P.No.3435/2019.

2. The petitioner is the accused. The offences alleged against the

petitioner are under Sections 323, 325, 506(i), 498(A) & 34 of the Indian Penal Code. Entire evidence was closed and the case was posted for hearing. At the juncture, the prosecution filed a petition, C.M.P.No.3435/2019, under Section 311 of Cr.P.C to issue summons to the Superintendent, Taluk Head Quarters Hospital, Tripunithura, to produce entire treatment records of CW1. The court below, allowed the said petition as per Annexure C order. It is under challenge in this Crl. M.C.

3. I have heard Sri. Anil K.Muhamed, the learned counsel for the petitioner, Sri. V.K.Balachandran, the learned counsel for the additional 2nd respondent as well as Sri. P.G.Manu, the learned Senior Public Prosecutor.

4. The wound certificate of CW1 was admitted in to evidence and

-3- marked. The wound certificate shows that CW1 was treated as out patient on 24.04.2014. But a reading of FIS would show that, in fact, CW1 was admitted as inpatient. It was in these circumstances, the petition has been filed to summon the entire treatment records to prove whether CW1 was actually hospitalized or not.

5. Section 311 of Cr.P.C gives wide power to the Magistrate Court

to summon any witness or to recall any witness already examined at any stage of the proceedings, provided it is necessary for the just decision of the case. Similarly, Section 91 of Cr.P.C can be invoked at any stage of the proceedings. Here, the prosecution wanted to call for the records and also to recall CW1 only to clear the confusion about the hospitalization of CW1. I am of the view that the Court below is absolutely justified in allowing the petition. Accordingly, CrI.M.C is dismissed. Sd/- DR. KAUSER EDAPPAGATH JUDGE uu 21.07.2022 -4- APPENDIX OF CRL.MC 590/2020 PETITIONER ANNEXURES ANNEXURE A PHOTOCOPY OF CMP NO.3435/2019 IN CC NO.222/2015 OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, TRIPUNITHURA. ANNEXURE B PHOTOCOPY OF THE OBJECTION. ANNEXURE C CERTIFIED COPY OF ORDER DATED 27/12/2019

IN CMP NO.3435/2019 IN CC NO.222/2015 OF THE COURT OF JUDICIAL FIRST CLASS MAGISTRATE, TRIPUNITHURA.

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