

Rithanya.C vs State of Kerala Represented by Public Prosecutor High Court of Kerala

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Court : Kerala Orders

Decided On : Apr-21-2022

Judge : Honourable Mrs. Justice Mary Joseph

Appeal No. : Crl.MC/2096/2022

Appellant : Rithanya.C

Respondent : State of Kerala Represented by Public Prosecutor High Court of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE MARY JOSEPH
THURSDAY, THE 21ST DAY OF APRIL 2022 / 1ST VAISAKHA, 1944
CRL.MC NO. 2096 OF 2022 IN C.C.NO.1568/2016 OF PENDING
BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
NJARAKKAL PETITIONER (ACCUSED NO.2 IN C.C.NO.1568/2016 OF
J.F.C.M NJARAKKAL, ERNAKULAM): C.RITHANYA, D/O LATE
CHANDRASEKHARAN, AGED 37 YEARS, NO 25, VENKATARAMAN
STREET, D 2, CEEBROS, SHANMUGA VILLA, 4TH FLOOR, T.NAGAR,

CHENNAI, PIN - 600 017 BY ADV. SRI.P.A.AJITH KUMAR
RESPONDENT: STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR HIGH COURT OF KERALA, ERNAKULAM, PIN - 682
031 BY SRI ARAVIND V MATHEW, PUBLIC PROSECUTOR THIS
CRIMINAL MISC. CASE HAVE BEEN FINALLY HEARD ON 01.04.2022,
THE COURT ON 21.04.2022 PASSED THE FOLLOWING:

ORDER

Dated this the 21st day of April, 2022. The petitioner is a partner of M/s.Global Services, Chennai. She was arrayed as accused No.2 in a prosecution launched under Section 142 of the Negotiable Instruments Act, 1881 (for short NI Act) alleging commission of offence punishable under Section 138 NI Act.

2. The prosecution is pending on the files of Judicial First Class Magistrate Court, Njarakkal (for short the court below) as

C.C.No.1568/2016. According to the petitioner, she being a permanent resident of Chennai and the affairs of the firm being taken care of by the third accused was unaware of the proceedings of the court below. Petitioner came to learn only later that non bailable warrant was issued by the court below through the Commissioner of Police, Chennai.

3. The petitioner alongwith the third accused approached this Court seeking for extension of time to appear before the

court below and to file application seeking bail. Another Bench of this Court granted time to the petitioner but declined petitioners claim for further extension of time. In the meantime, Covid-19 pandemic has been out broken and consequently the life of Tamil Nadu was paralysed. Movements were curtailed and therefore, the petitioner could not approach the court below to

arrange for sureties and file application seeking bail. The petitioner is a lady having two minor children and has no other alternative than to take the children alongwith her to appear before the court below. The case was posted on 16.02.2022 and as per the proceedings on that day non bailable warrant was

ordered against the petitioner and the same stands posted further to 22.04.2022. The petitioner is ready to surrender and apply for bail and also to abide by any conditions that may be imposed by an order granting bail. Therefore, for facilitating her to surrender before the court below and arranging sufficient sureties, petition on hand is filed seeking to recall the warrant pending execution against her.

4. This Court has noticed that the prosecution in question, was taken on file by the court below in the year, 2016. The petitioner herein alongwith the 3rd accused in the above

prosecution has approached this Court by filing CrI.M.C No.2508/2021 seeking for extension of time and also for a direction to the court below to grant bail on the date of surrender itself.

5. Vide order passed on 30.04.2021 in the above petition the following directions, were issued.

(i) The petitioners are permitted to surrender before the Court of the Judicial First Class Magistrate, Njarakkal and move an application for bail in C.C.No.1568 of 2016.

(ii) In the event the petitioners file such an application,

the learned Magistrate shall consider the bail application on the date of surrender itself and pass orders thereon on the same day itself, keeping in mind in ratio of this Court in Sujatha, Biju and Sreekumar (Supra).

(iii) In order to provide the petitioners an opportunity to surrender and seek bail, the non bailable warrant pending against the petitioners shall be kept in abeyance for a period of three weeks from today. Thus, for enabling the petitioner and the 3rd accused to

surrender before the court and seek for bail, the non bailable warrant pending against them was ordered to be kept in abeyance for a period of three weeks from 30.04.2021.

6. Petitioner failed to surrender before the court below as

directed by the order above. Instead, she approached the Court again, by filing Crl.M.A.No.02/2021 in Crl.M.C No.2508/2021 seeking for enlargement of time for surrendering before the court below and to move an application for bail. The court concerned has passed an order dismissing the application on 01.10.2021. It has been observed by the Court that Crl.M.A.No.01/2021 was filed by the petitioner earlier seeking for enlargement of time. The same was allowed and the time to surrender and apply for bail was extended for one month from 08.06.2021. Despite grant of time till 08.06.2021, the petitioner failed to comply with the direction. She approached the court seeking enlargement of time by filing Crl.M.A.No.02/2021. The court declined the claim for further time in the above context. The petitioner is now before this Court with the claim for enlargement of time. Her only intention is to protract the proceedings to defeat the interest of the respondent.

7. As already stated, the prosecution is of the year, 2016 and as on date six years have already been elapsed after launching of it. Petitioner failed to surrender before the court

below during this extensive period. The reason for failure was non service of summons, on her due to the incorrect address furnished. Being convinced of, this Court had issued a direction to keep the non bailable warrant pending against the petitioner in abeyance for a period of three weeks from 30.04.2021. The petitioner failed to comply with the direction to surrender and seek for bail, but again approached this Court by filing Crl.M.A.No.01/2021 seeking for time. Time was granted for one month from 08.06.2021. Without complying with the directions of this Court, raising some untenable contentions, the petitioner again approached this Court by filing Crl.M.A.No.02/2021 seeking for enlargement of time. On being convinced that the application is devoid of bonafides, it was dismissed.

8. The petitioner is now before this Court again seeking for the same relief. It appears to this Court that the approach of

the petitioner before this Court is only to protract the prosecution launched against her. Despite grant of sufficient time, the petitioner failed to turn up and co-operate with the proceedings of the court below. The reason stated in the application seeking for enlargement of time is highly insufficient to grant the relief. The

petitioners approach before this Court is absolutely without bonafides and being a constant defaulter, this Court is declined to safeguard her interest. Crl.M.C fails for the reasons and is dismissed. Sd/- MARY JOSEPH JUDGE NAB APPENDIX OF CRL.MC 2096/2022 PETITIONERS ANNEXURES: ANNEXURE 1 TRUE COPY OF THE ORDER IN CRL M.C

ORDER IN CRL.M.A 2/2021 DATED 1-10-2021

ANNEXURE 2 TRUE COPY OF THE EXTRACT PUBLISHED IN THE OFFICIAL WEBSITE OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, NARAKKAL, ERNAKULAM IN C 1568/2016 DATED 16-2-2022 RESPONDENTS ANNEXURES : NIL //TRUE COPY// P A TO JUDGE

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