

V.V.George vs State of Kerala Represented by Public Prosecutor

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Court : Kerala

Decided On : Mar-31-2021

Judge : Honourable Mr. Justice Ashok Menon

Appeal No. : Bail Appl./599/2021

Appellant : V.V.George

Respondent : State of Kerala Represented by Public Prosecutor

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ASHOK MENON
WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA,
1943 Bail Appl..No.308 OF 2021 CRIME NO.1429/2020 OF Adimaly
Police Station , Idukki PETITIONER/S: V.V. GEORGE AGED 57 YEARS
KARADIPARA, KALLAR, VATTAYAR P.O., PEECHADPLAMALA,
IDUKKI BY ADVS. SRI.JOBY JACOB PULICKEKUDY SHRI.DAJISH
JOHN SHRI.HARIKRISHNAN P. SRI.ANIL GEORGE RESPONDENT/S:
1 STATE OF KERALA HIGH COURT OF KERALA 2 THE STATION
HOUSE OFFICER ADIMALY POLICE STATION, IDUKKI R1 BY PUBLIC
PROSECUTOR OTHER PRESENT: SMT.V.SREEJA-PP THIS BAIL
APPLICATION HAVING COME UP FOR ADMISSION ON 31.03.2021,

ALONG WITH Bail Appl..599/2021, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ASHOK MENON
WEDNESDAY, THE 31ST DAY OF MARCH 2021 / 10TH CHAITHRA,
1943 Bail Appl..No.599 OF 2021 CRIME NO.14/2020 OF Adimali Forest
Range Office , Idukki PETITIONER/S: 1 V.V.GEORGE AGED 57 YEARS
KARADIPARA, KALLAR-VATTAYAR P.O. 2 K.G. JOSHUA AGED 68
YEARS KOLLAMPARAMBIL HOUSE, ELAKOLLOOR P.O. BY ADVS.
SRI.JOBY JACOB PULICKEKUDY SHRI.DAJISH JOHN
SHRI.HARIKRISHNAN P. SRI.ANIL GEORGE BY K.G.
JOSHUA(PARTY IN PERSON) RESPONDENT/S: 1 STATE OF
KERALA REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT
OF KERALA 2 THE RANGE OFFICER ADIMALY SMT.V.SREEJA-PP
THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
31.03.2021, ALONG WITH Bail Appl..308/2021, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:

COMMON ORDER

[Bail Appl..308/2021, Bail Appl..599/2021] Dated this the 31st day of March 2021 Applications for anticipatory bail under Section 438 of Cr.P.C. Applicants are accused Nos.1 and 2 of Adimali Forest Range Office, Idukki for having allegedly committed offences punishable under Sections 27(1) (e) (1) and (iv) of the Kerala Forest Act for which the applicants have filed B.A No.599/2021. The first applicant is also an accused in another Crime No.1429/2020 of Adimali Police Station for having allegedly committed offences punishable under Sections 143, 147, 447, 353, 341, 506(i), 427 r/w Section 149 of IPC for which he has filed B.A. No.308/2021.

2. The prosecution case, in brief, is that the applicants

had allegedly trespassed into the forest area and started cultivating cardamom over the encroached property and that he was allotted only a lesser land but he had

encroached over the adjoining forest land also. The first applicant had approached this Court for relief against the Forest officials, in consequence of which, an order was made by this Court in W.P.(C) No.19781/2017 dated 16.06.2017, in which there was a direction that no criminal case shall be registered against him unless the property was properly identified and demarcated in the presence of the Cardamom Settlement Officer. It is stated that even before the said property was measured and settled to the satisfaction of the Cardamom Settlement Officer, the Forest officials have registered a crime OR No.14/2020. When the forest officials came there to his property, he had allegedly deterred them from performing their duty as Forest officials in consequence to which, Crime No.1429/2020 was registered at Adimali Police Station. The non-bailable offence in that crime is under Section 353 of IPC, for having deterred the public servants from discharging their duty as public servants. The applicants would contend that the property has not been measured and identified as forest land to the

satisfaction of the Cardamom Settlement Officer and therefore the criminal case would not lie against them. The 1st applicant has also approached this Court for the contempt of the order in the writ petition, which was referred to above.

3. Heard the learned counsel for the applicants and the learned Public Prosecutor.

4. The learned Public Prosecutor points out that the

1st applicant has got earlier antecedents and a similar case of encroachment has been registered as OR No.1/2017 of Machiplavu Forest Range. Therefore, it would indicate that the first applicant is a constant encroacher of the forest lands. The learned Public Prosecutor submits that the property was already measured and specifically

demarcated. The surveyor has identified the property of the applicant, which was in his possession and also demarcated the area of the plantation encroached by him subsequently. It is also stated that the Cardamom Settlement Officer was also present at the time of said measurement of the

property. A report was produced by the Cardamom Settlement Officer addressed to the District Collector, Idukki dated 17.02.2021, in which it is stated that the property of the applicants and the forest land are lying without any specific demarcation and that it cannot be identified. Even though it is stated that the property was measured by the Taluk Surveyor, it was not been identified to the satisfaction of the Cardamom Settlement Officer, and therefore, according to the judgment passed by this Court in the writ petition, the demarcation and settlement of the property has to be made to the satisfaction of the Cardamom Settlement Officer.

5. Since the first applicant has already approached this

Court for contempt of the judgment in the writ petition, I am not inclined to make any comments regarding the contempt or the non-fulfillment of the directions of this Court in the writ petition. However, considering the entire

facts and circumstances, I am convinced that custodial

interrogation of the applicants may not be required because

it is the identity of the land which is allegedly encroached by the applicants which are to be settled and that they are not likely to flee from justice. The maintainability of the criminal charge against the applicants depends on the measurement of the property and demarcation of the boundaries separating the applicants' property from the forest land to the satisfaction of the Cardamom Settlement Officer. The allegation of deterring public servants from performing their duty would also depend

on the identity of the encroachment. Therefore, the applications are allowed, the applicants are directed to surrender before the investigating officer within two weeks. In the event of their arrest, after interrogation, they shall be released on bail on the execution of a bond for Rs.50,000/- (Rupees fifty thousand only) each with two solvent sureties each for the like amount to the satisfaction of the arresting officers in each of the cases, and on following further conditions:

- (i) They shall appear before the investigating officer as and when called for.
- (ii) They shall not attempt to influence the witnesses or tamper with evidence.
- (iii) They shall not get involved in any other similar

crimes during the currency of the bail. In case of violation of any bail condition, the prosecution is at liberty to apply for cancellation of the bail before the jurisdictional court. SD/- ASHOK MENON JUDGE rmm

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