

Ashok Kumar vs State of Kerala

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Court : Kerala

Decided On : May-28-2021

Judge : Honourable Mr. Justice Sunil Thomas

Appeal No. : Crl.MC/2161/2021

Appellant : Ashok Kumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE SUNIL THOMAS
FRIDAY, THE 28TH DAY OF MAY 2021 / 7TH JYAISHTA, 1943
CRL.MC NO. 2161 OF 2021 AGAINST THE ORDER/JUDGEMENT IN
CC 1156/2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS -I,
THRISSUR PETITIONER/ACCUSED NO.2: ASHOK KUMAR, AGED 54
YEARS S/O.BALAKRISHNAN, DEPUTY PRISON OFFICER, HIGH-
TECH SECURITY JAIL, VIYYUR CENTRAL JAIL, THRISSUR,
RESIDING AT ANU SHREE HOUSE, COMPALADY DESAM, POORU
VAZHI VILLAGE, KUNNATHOOR TALUK, KOLLAM DISTRICT. BY
ADVS. T.K.RAJESHKUMAR KUM.APARNA SOMARAJAN
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED

BY SI OF POLICE, VIYYUR POLICE STATION, THRISSUR DISTRICT, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682031. OTHER PRESENT: PP MAYA M.N THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28.05.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Petitioner herein is arrayed as the second accused in C.C.No.1156 of 2020 pending before the Judicial First Class Magistrate Court-I, Thrissur arising from Crime No.723 of 2015 of Viyyur Police Station for offence punishable under section 304A of the Indian Penal Code.

2. The allegation of the prosecution was that, petitioner while

working as Deputy Prison Officer along with two other officials, including the Deputy Superintendent of Viyyur Central jail failed to take a prisoner on time to the hospital which culminated in the death of that person on 24.05.2015. Pursuant to the crime registered, investigation was carried out and final report was laid.

3. Petitioner, contending that he is innocent and that,

prosecution of the petitioner is without sanction under Section 197 Cr.P.C has approached this Court. Learned counsel for the petitioner invited my attention to Annexure-A3 judgment, by which, another Bench of this Court in CrI.M.C.No.1795 of 2018 filed by a co-accused quashed the proceedings on the ground that sanction under S.197 Cr.P.C has not been obtained from the Government to prosecute the accused. It was also held that the incident happened while the accused were on official duty.

4. Even from the facts alleged by the prosecution, it is evident

that the incident happened while the petitioner was on duty. It is also admitted fact that sanction has not been obtained at the time of taking cognizance. Learned counsel for the petitioner relied on the decision reported in D.Devaraja v. Owais

Sabeer Hussain ((2020)7 SCC 695), wherein, it was held that, sanction was necessary for taking cognizance of offences allegedly committed by the officer while on duty. Learned counsel also referred to the decision in CBI v. B.A.Srinivasan (2020(2) SCC 153) where identical question was raised.

5. It is evident at the time of taking cognizance, sanction was

not obtained. In the light of the above and in the light of the stand taken by this Court evidenced by Annexure-A3, I am inclined to allow the Crl.M.C. and to quash the entire proceedings in C.C.No.1156 of 2020. In the result, Crl.M.C is allowed. All further proceedings in C.C.No.1156 of 2020 pending before the Judicial First Class Magistrate Court-I, Thrissur arising from Crime No.723 of 2015 of Viyyur Police Station will stand quashed.

Sd/- SUNIL THOMAS JUDGE Sbna/ APPENDIX OF CRL.MC 2161/2021 ANNEXURE/EXHIBITS ANNEXURE A1 A TRUE COPY OF THE FIR NO.723/2015 REGISTERED AGAINST THE PETITIONER BY THE VIYYUR POLICE STATION, THRISSUR DISTRICT. ANNEXURE A2 THE CERTIFIED COPY OF THE CHARGE SHEET SUBMITTED BY THE FIRST RESPONDENT. ANNEXURE A3 A TRUE COPY OF THE JUDGMENT PASSED BY THIS HON'BLE COURT IN CRL.M.C.NO.1795/2018 DATED 3.3.2020. ANNEXURE A4 A TRUE COPY OF THE CASE STATUS PROVIDED IN

THE E-COURT SITE REGARDING THE STATUS OF THE C.C.NO.1156/2020 PENDING BEFORE THE JFCM COURT-I, THRISSUR.

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