

Shibi vs State of Kerala

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Court : Kerala

Decided On : Oct-31-2019

Judge : Honourable Mr. Justice Alexander Thomas

Appeal No. : Bail Appl./3450/2019

Appellant : SHIBI

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
THURSDAY, THE 31ST DAY OF OCTOBER 2019 / 9TH KARTHIKA, 1941
AGAINST THE ORDER/JUDGMENT IN CRMC 610/2019 OF ADDITIONAL
DISTRICT COURT & SESSIONS COURT - VI, KOLLAM CRIME NO.588/2019 OF
Kollam East Police Station , Kollam PETITIONERS: 1 SHIBI AGED 48 YEARS
S/O. RADHAKRISHNAN, LEKSHMI VILASAM, VRINDAVAN NAGAR,
ULIYAKOVIL CHERRY,ULIYAKOVIL P.O., KOLLAM 691 019. 2 SHIBU KUMAR,
AGED 45 YEARS S/O. RADHAKRISHNAN, LEKSHMI VILASAM, VRINDAVAN
NAGAR, ULIYAKOVIL CHERRY,ULIYAKOVIL P.O., KOLLAM 691 019. BY ADV.
SRI.M.RAJESH RESPONDENTS: 1 STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682

031. 2 THE SUB INSPECTOR OF POLICE, KOLLAM EST POLICE STATION, KOLLAM DISTRICT 691 001. SRI.AMJAD ALI, PUBLIC PROSECUTOR THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 31.10.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: ALEXANDER THOMAS, J ===== BAIL APPLICATION NO. 3450/2019 ===== Dated this the 31st day of October, 2019

O R D E R

The petitioners herein have been arrayed as accused 1 and 2 among

the 2 accused in the instant crime No. 588/2019 of Kollam East Police Station which has been registered for offences punishable under sections 380, 354, 324, 294(b) and section 341 r/w section 34 of the IPC on the basis of the FIS given by the lady defacto complainant on 02/04/2019 at about 9.20 am in respect of the alleged incidents which happened on 30/03/2019 at about 10 pm.

2. The prosecution case is that the lady defacto complainant and

her husband were conducting a sweet stall in the building owned by the mother of the petitioners herein at Kadappakada, Kollam and that the accused persons used to borrow money from the lady defacto complainant and her husband and on one occasion, the lady defacto complainant and her husband had demanded that the accused persons should return Rs. 400/- borrowed by them and on 30/03/2019, A2 had thrown the said money into her shop and assaulted her husband and that in the night of 30/03/2019, the accused persons have committed theft of the bottle cooler, bakery items, furniture, weighing machine, sealing lock etc from the said shop and locked

it with another lock. That on 31/03/2019, when the defacto complainant and her husband went to open the shop, they found that it was locked with another lock. They broke open the lock, and only then they could detect the above said theft and unlawful occupation. Further that on 31/01/2019, while the defacto complainant and her husband were standing in the shop, A1 and A2 had come there and hit the

lady defacto complainants husband with an iron rod on his chest and shoulder and when the lady defacto complainant had intervened, her clothes were torn and she was poked on her chest with an iron rod and that she lost her gold chain weighing 3 sovereigns and that when her son intervened, he was also assaulted by the accused persons.

3. Counsel for the petitioners would point out that the above said

allegations are false and baseless and that it is true that earlier the mother of the petitioners had let out her building to the lady defacto complainant and her husband and that they had vacated the said shop room owned by the petitioners' mother as early as on 30/01/2019 and later when they again attempted to trespass into the shop room on 27/03/2019, the petitioners' mother had moved a civil suit as OS No. 246/2019 before the Addl. Munsiff's Court, Kollam, seeking injunction as against the defendants therein (defacto complainant and her husband) and such Civil Court has passed order dated 29/03/2019 on IA No. 1529/2019 in OS No. 246/2019

granting interim injunction as prayed for until further orders as against the defendant therein, whereby the said party has been enjoined from trespassing into the said plaint scheduled property. It is only to get over the said Civil Court order of injunction, that the lady defacto complainant and her husband has shown the ingenious and circuitous method of getting the above said crime registered as against the petitioner raising false allegations about the incidents which is said to have happened on 30/03/2019 and

room as early as on 30/01/2019 and the Civil Court has enjoined them from trespassing into the said property on 29/03/2019. That the scene of occurrence in the instant crime is the plaint scheduled property in the above said Civil Suit in OS No. 246/2019 and that the very initiation of the impugned criminal proceedings is nothing but sheer abuse of the process of the Court.

4. After hearing both sides and after careful evaluation of the facts

and circumstances of this case, more particularly the aspects borne out from the above said injunction order passed by the Civil Court on 27/03/2019 etc, this Court is inclined to take the view that the petitioners have made out a strong probable case, that custodial interrogation may not be necessary or warranted for effectuating the smooth and fair conduct of investigation in this crime.

5. Accordingly it is ordered that in the event of the petitioners being

arrested in relation to the above said crime, then they shall be released on bail on their separately executing bond for Rs.40,000/- (Rupees Fourty Thousand only) each and on their separately furnishing 2 solvent sureties each for the like sum, both to the satisfaction of the Investigating Officer concerned.

6. However, the grant of bail may be subject to the following conditions.

(i) The petitioners shall not involve in any criminal offences of similar nature.

(ii) The petitioners shall fully co-operate with the investigation.

(iii) The petitioners shall report before the investigating officer as and when required in that connection.

(iv) The petitioners shall not influence witness or shall not tamper or attempt to tamper evidence in any manner, whatsoever.

(v) If there is any violation of the abovesaid conditions by the

petitioners then the jurisdictional court concerned will stand hereby empowered to consider the plea for cancellation of bail at the appropriate time. With these observations and directions, the above Bail Application will stand disposed of. Sd/-
ALEXANDER THOMAS Nsd JUDGE //true copy// PA to Judge

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