

Shiju Augustine Vs. State of Kerala

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Court : Kerala

Decided On : Jun-18-2015

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : Shiju Augustine

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS THURSDAY, THE 18TH DAY OF JUNE 2015 28TH JYAISHTA, 1937 CrI.MC.No. 3678 of 2015 ()
----- STC NO. 454/2012 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, TALIPARAMBA ----- PETITIONER :
----- SHIJU AUGUSTINE, S/O.AUGUSTINE, AGED 32 YEARS CHEMBAPULLY HOUSE, KURUMATHOOR DESOM THALIPARAMBU, KANNUR DISTRICT. BY ADVS.SRI.LAL K.JOSEPH SRI.A.A.ZIYAD RAHMAN SRI.JOSEPH KURIAN VALLAMATTAM RESPONDENT(S) : -----

1. STATE OF KERALA REP. BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA-682 031.

2. BINDU JOSEPH, AGED 34 W/O.BIJU JOSEPH, KOCHUPURACKAL HOUSE, PANATHOOR P.O., RAJAPURAM, KASARGODE DISTRICT. R1 BY PUBLIC PROSECUTOR SMT. S. HYMA THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/06-2015, THE COURT ON THE SAME DAY PASSED

THE FOLLOWING: Mn ...2/- CrI.MC.No. 3678 of 2015 ()
----- APPENDIX PETITIONERS' ANNEXURES :
----- ANNEXURE A1 : TRUE COPY OF THE
COMMON

ORDER

DATED 31-10-2013 IN CRL.M.C. 4277/13 AND THE CONNECTED CRL.M.C. IN
THE CONNECTED CRIMES PASSED BY THIS HONOURABLE COURT.
ANNEXURE A2 : TRUE COPY OF THE COMPLAINT STC4542012 FILED BY
THE 2D RESPONDENT BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE
COURT, TALIPARAMBA. ANNEXURE A3 : CERTIFIED COPY OF THE B DIARY
PROCEEDINGS OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT,
TALIPARAMBA. RESPONDENT(S)' EXHIBITS : NIL
----- //TRUE COPY// P.S. TO JUDGE Mn
ALEXANDER THOMAS, J.

===== CrI.M.C.No. 3678 of 2015 ===== Dated
this the 18th day of June, 2015

ORDER

The above captioned CrI.M.C. has been filed under Sec.482 of the Code of Criminal Procedure with the following prayers: "..... to call for the records and quash order dated 8.1.2015 and further proceedings in Annexure A3 and allow the petitioner to appear before the Judicial First Class Magistrate Court, Taliparamba and enlarge him on bail, to secure the ends of justice." 2. Heard Sri.Lal.K.Joseph, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondent- State of Kerala.

3. It is stated that the petitioner is the settler of the Trust named, "Kerala Child Welfare Society" (KCWS), which is formed by virtue of the registered trust deed No.13/2003 of SRO, Kasargod, and is having various regional offices in various districts and the petitioner was running 119 schools with large number of employees and staff. As the petitioner had to face financial crunch, refund of certain security deposits of the relieved teachers and others became delayed and

certain teachers filed criminal cases against the Crl.M.C.3678/15 - :

2. :- petitioner alleging offences under Secs.420 and 34 of the I.P.C. On 6.3.2013, the petitioner was arrested with Crime No.101/2013 of Cherpu Police Station for offences under Secs.420 and 34 of the I.P.C.. Thereafter, the petitioner was produced before various courts in respect of all the crimes. The petitioner was released on bail in several of these crimes in similar nature, which, the petitioner states, are purely civil in nature. There were 46 cases pending investigation against the petitioner and the Sessions Court, Alappuzha, by order dated 6.9.2013 in Crl.M.C.No.4200/2013 granted bail to the petitioner with five stringent conditions and in the connected cases also bail applications filed by the petitioner were allowed with such stringent conditions and as the petitioner was in custody, he was unable to comply with those conditions, he filed Crl.M.C.No.4277/2013 and various other connected Crl.M.Cs. before this Court praying for relaxation of the said impugned conditions as he could not avail the release on bail in spite of the bail order granted to him because of such stringent conditions. This Court, by Anx. A-1 common order dated 31.10.2013 in Crl.M.C.No.4277/2013 and connected cases, ordered that the stringent conditions imposed in all the bail orders by the Sessions Crl.M.C.3678/15 - :

3. :- Court will be modified by ordering that the petitioner shall furnish the originals of Anx.A-5 and A-6 therein along with the original of Anx.A-9 therein and execute his personal bond and bonds of sureties in Anx.A-10 in that case.

4. Further, it was specifically ordered in paragraph 6 of Anx.A-1 order passed by this Court in those Crl.M.Cs. that in modification of the order passed in C.C.No.115/2013 of the Chief Judicial Magistrate's Court, Ernakulam and connected 38 cases, the petitioner shall furnish copies of the above said documents attested by Notary Public before the court in all the 38 cases concerned and that the petitioner shall comply with such modified order within one month, etc..

5. Pursuant to Anx.A-1 common order passed by this Court the petitioner was enlarged on bail and he is now facing trial in all the these cases. It is further stated that the petitioner has only now come to know that Anx.A-2 Summary Trial Case,

S.T.C.No.454/ 2012 filed by the defacto complainant therein before the Court of Judicial First Class Magistrate, Thaliparamba, and that the petitioner was unable to appear before the Judicial First Class Magistrate's Court, Thaliparamba as he was facing trial in several courts in all the Crl.M.C.3678/15 - :

4. :- districts in the State and that proceedings in Anx.A-2 commenced when the petitioner was in judicial custody and hence summons could not be served upon him and while the petitioner was released, warrant was pending in this case, and subsequently, the Judicial First Class Magistrate's Court, Thaliparamba issued non-bailable warrant and further steps under Secs.82 and 83 of the Cr.P.C. as per Anx.A-3 proceedings dated 8.1.2015. It is stated that the offence alleged in Anx. A-2 Summary Trial Case, S.T.No.454/2012 on the file of the Judicial First Class Magistrate's Court, Thaliparamba is one under Sec.138 of the Negotiable Instruments Act for the alleged dishonour of the cheque an amount of Rs.1 lakh. That the petitioner is ready and willing to appear before the jurisdictional Magistrate and furnish sureties for granting bail and it is in the light of these aspects, that the petitioner has made the aforementioned prayer including one for direction to allow the petitioner to appear before the Judicial First Class Magistrate's Court, Thaliparamba and to enlarge him on bail to secure the ends of justice.

6. Taking into account the totality of the facts and circumstances of this case and the fact that this Court had taken a favourable view in Anx. A-1 common order dated 31.10.2013 in Crl.M.C.3678/15 - :

5. :- Crl.M.C.No. 4277/2013 and connected cases, so as to ensure that the stringent conditions imposed by the Sessions Court, are suitably relaxed to permit the petitioner to avail the benefit of bail in those various crimes and as it is stated that the proceedings in the impugned Anx.A-2 S.T.C. No.452/2012 had commenced while the petitioner was in judicial custody in the other connected cases and that hence summons could not be served upon him, etc., it is ordered as follows: In case the petitioner appears before the Judicial First Class Magistrate's Court, Thaliparamba dealing with S.T.C.No.454/2012 within two weeks from today and submits necessary application for recall of warrant and

other impugned proceedings referred to in Anx.A-3 as well as necessary application for grant of bail, then the above said Magistrate's court shall consider those applications on the same day itself and grant him bail taking into account the favourable view taken by this Court in Anx.A-1 common order, but after imposing necessary conditions as may be found just and fair in the facts and circumstances of this case and consequently could also pass appropriate orders on the other application for recall of warrant and other impugned proceedings referred to Anx.A-3. Orders on the bail application as directed above will be passed on the same day of his appearance before the jurisdictional Magistrate concerned as directed above. It is made clear that the order is passed in the interest of justice taking into account the extenuating circumstances on the basis of Anx.A-1 common order passed by this Court and the other attendant circumstances stated above. With these observations and directions, the CrI.M.C. stands finally disposed of. Sd/- sdk+ ALEXANDER THOMAS, JUDGE ///True copy/// P.S. to Judge CrI.M.C.3678/15 - :

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