

State of Kerala Vs. Ouseph and ors.

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SooperKanoon Citation : sooperkanoon.com/724646

Court : Kerala

Decided On : Sep-21-1972

Reported in : 1973CriLJ872

Judge : V. Khalid, J.

Appellant : State of Kerala

Respondent : Ouseph and ors.

Judgement :

ORDER

V. Khalid, J.

1. This is the second time I am called upon to consider the propriety of an order passed by the Sub Magistrate. Ferumbavoor granting bail to accused charged under Section 302, I.P.C. The matter having come before me in quick succession, I think it necessary to tell the Magistrate in clear terms about his jurisdiction to grant bail in murder cases.

2. The facts of the case are that on 27.5.1972 at 11.00 p.m. there was some incident in which one Lonappan aged about 22 met with his death. His body was seen floating in the water near-by. The FIB was registered on 28.5.1972 at 12.15 p.m. No person was named in the FLR as accused and at that time it was resumed to be a case of drowning. Post-mortem examination revealed that the

cause of death was asphyxia due to drowning. On 10th and 11th June. 1972 three Gersons were questioned by the police. From the materials thus available, the police arrested the first and 4th accused on 11.6.1972 at 7.00 p.m. and the 2nd accused on 12.6.1972.

3. On the strength of the statements of these three persons the police moved the Magistrate for remand and the learned Magistrate ordered remand of the accused persons for 15 days till 26.6.1972. It was in the meantime that an application was made for bail which was granted on 19.6.1972.

4. The order passed by the learned Magistrate discloses that the Head Constable was present in Court and the Inspector of Police did not turn up in spite of notice. He observes:

The allegation in the remand report is that the accused (deceased?) was beaten with hands and then dragged to the water and was drowned. It is not clear from the prosecution documents whether the accused had the intention to kill the deceased.

On this finding the accused were released on bail.

5. In this application for cancellation of bail filed by the State an affidavit by the Inspector of Police. Alwawe, is filed. According to him Crime No. 85 of 1972 of the Ankamaly Polio Station was registered under Sections 302 and 34, I.P.C. against four accused Persons. The original details given were unnatural death, but according to the affidavit, early investigation itself disclosed that it was a case of murder. As regards the fact that the Inspector was not present in Court in spite of notice it is averred in para 5 of the affidavit that hp did not receive any notice of the bail application, that Head Constable 880 was present in Court as directed by him in connection with the conduct of other cases and that when the application for bail was referred to the Head Constable by the Court, he opposed the motion and submitted that the same might be posted to another date on which the Assistant Public Prosecutor would be present. The learned Magistrate did not heed this prayer and granted bail.

6. I am constrained to remark that the Magistrate has displayed rare courage but poor judicial discretion in allowing bail in this case. He has rushed in where the Sessions Court and even this Court will fear to tread. The furlsdiction of a Magistrate to grant bail is restricted to cases where the materials placed before him would not persuade any Court to convict the accused. But in this case I am told that the investigation was still proceeding and additional materials were being collected. It was the duty of the learned Magistrate to have waited for the investigation to complete.

7. This petition poses the question whether a committing Magistrate has jurisdiction at all to release the accused who are charged with offences punishable with death or imprisonment, for life on bail. I am not prepared to hold that under no circumstances can a committing Magistrate release an accused charged with an offence punishable with death or imprisonment for life on bail. The wordings of Section 497, Cr.P.C. indicate that any Court before whom the accused are produced may have jurisdiction to release the accused on bail: but only on being satisfied that there are no reasonable grounds for believing that the accused are guilty of an offence punishable with death or imprisonment for life. And it is always desirable for the committing Magistrate to permit the Sessions Court to exercise its jurisdiction and not to usurp the functions of that Court to himself. It was undoubtedly premature for the Magistrate to have released the accused on bail at the stage when investigation itself was not complete.

8. The observation in the order by the learned Magistrate that 'it is not clear from the prosecution documents whether the accused had the intention to kill the deceased' is reckless. There is no electronic device with Courts to divine the mind of man. Intention to kill has to be gathered from the totality of circumstances emerging at the end of the trial. To have braved such an opinion on the 162 statements of three witnesses is outrageous.

9. It is pertinent to observe that the learned Magistrate remanded the accused to custody for 15 days till 26.6.1972 on the materials available with him. Under Section 167(3) and (4), Cr.P.C. it is incumbent on the Magistrate to record the reasons for remanding an accused to custody and also send a copy to the

Magistrate to whom he is immediately subordinate. Therefore, the order of remand is a judicial order and should be supported by reasons. When the Magistrate found that the materials placed before him were sufficient to order remand, it passes one's comprehension how he changed his opinion immediately thereafter and released the petitioner on bail the absence of any additional materials. Having, ordered the accused to be detained in custody till 26.6.1972, the further order of enlarging them on bail on 19.6.1972 without sufficient materials is clearly a flagrant violation of law and is without jurisdiction. The jurisdiction of the committal Court, it has been repeatedly laid down, even to discharge an accused in Sessions Cases is confined only to cases when the materials on record would not persuade any Judge to convict the accused. I have no hesitation to hold that the Magistrate in this case has exceeded his jurisdiction in releasing the petitioners on bail and has been unduly hasty in doing so. The affidavit is sworn to by the Inspector of Police, a responsible officer also indicate.' that the Magistrate was impatient in not even granting an adjournment to enable the Assistant Public Prosecutor to appear and oppose the bail. I think this is a fit case where the bail granted by the Magistrate has to be cancelled and I do so. Accused are at liberty to move the Sessions Court for bail if they choose to after surrendering to the police.

A copy of this judgment will be communicated to the Magistrate, who passed the impugned order, wherever he is.