

Asharaf a Vs. State of Kerala

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Court : Kerala

Decided On : Apr-02-2009

Reported in : 2009(2)KLJ268

Judge : V. Ramkumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 438; Code of Criminal Procedure (CrPC) (Amendment) Act, 2005 - Sections 42; Indian Penal Code (IPC) - Sections 323, 341, 353, 354 and 452

Appeal No. : Bail Appeal No. 1543 of 2009

Appellant : Asharaf a

Respondent : State of Kerala

Advocate for Def. : K.S. Sivakumar, P.P.

Advocate for Pet/Ap. : Siraj Karoly, Adv.

Judgement :

ORDER

V. Ramkumar, J.

1. In this petition filed under Section 438 Cr.P.C, the petitioner, who is the sole accused in Crime No. 5 7 of 2009 of Elathur Police Station for offences punishable

under Sections 341, 323, 354 & 452 I.P.C., seeks anticipatory bail.

2. This application for pre-arrest bail has been filed on the assumption that all the aforementioned offences except the offence punishable under Section 354 IPC are bailable offences and that by virtue of the Code of Criminal Procedure (Amendment) Act, 2005 (Act 25 of 2005) the offence punishable under Section 354 IPC is now non-bailable.

3. Both the assumption made by the petitioner are erroneous. The offence punishable under Section 452 IPC is non-bailable, justifying the invocation of Section 438 Cr.P.C. The offence punishable under Section 354 IPC continues to be bailable notwithstanding the amendment of Cr.P.C. No doubt., going by Section 42(f)(viii) of the Code of Criminal Procedure (Amendment) Act of 2005, (Act 25 of 2005), it would appear as though there is an amendment to Section 354 IPC, so far as the 1st Schedule to Cr.P.C. is concerned. But the said amendment incorporated as per Section 42(f)(viii) of the Amending Act of 2005 is only to the effect that the word 'ditto' occurring in Column 4 of the table in the 1st Schedule to Cr.P.C is replaced by the word 'bailable'; Clauses (vii) and (viii) of Section 42(f) of the Amending Act read as follows:

(vii) Section 353 for the word 'Ditto', the word Non-bailable shall be substituted;

(viii) Section 354 for the word 'Ditto' the word 'Bailable ' shall be substituted

The said amendment became necessary on account of the amendment pertaining the immediately preceding section namely Section 353 IPC which has been made non-bailable. Section 353 IPC was a bailable offence before the said amendment. Therefore, if the word 'ditto' has to remain against Section 354 IPC in Column 4 of the table in the 1st Schedule to Cr.P.C. then Section 354 IPC also would have become non-bailable as in the case of Section 353 IPC, Thus, by replacing the word 'ditto' in Column 4 of the table with the word 'bailable', Section 354 IPC continues to be a bailable offence as before. The amendment incorporated by Section 42(f)(vii) of the Amending Act has come into force on 23.6.06, in view of the notification published as SO 923(E) dated 12.4.06. With regard to Section 42(f)(viii) of the Amending Act, Clauses (iii) and (iv) alone have

been held back and all other clauses thereto have come into force on 23.6.06 as per SO 923(E).

4. Since Section 452 IPC is a non-bailable offence, this petition for anticipatory bail is maintainable. However, what now survives for consideration-is'as~to whether the petitioner is entitled to anticipatory bail as prayed for.

5. The case of the prosecution can be summarised as follows:

On 17.2.09 at 10.30 p.m., the petitioner/accused trespassed into the courtyard of the house of the de facto complainant (a lady) and outraged her modesty by holding her hand and tearing the nighty worn by her and when the de facto complainant tried to escape to the verandha of the house, the accused chased her to the verandha and attempted to catch hold of her. When her husband intervened, the accused beat him and twisted the hand of the de facto complainant and stamped her.

6. The learned Public Prosecutor opposed the application.

7. Anticipatory bail cannot be granted in a case of this nature. But at the same time, I am inclined to permit the petitioner to surrender before the Investigating Officer for the purpose of interrogation and then to have his application for bail considered by the Magistrate having jurisdiction. Accordingly, the petitioner shall surrender before the investigating officer on any day between 05-04-2009 and 07-04-2009-for the purpose of interrogation and recovery of incriminating material, if any. The petitioner shall thereafter be produced on the same day before the Magistrate who shall consider and dispose of his application for regular bail preferably on the same date on which it is filed.

This petition is disposed of as above.