

Sreekumar Vs. State of Kerala

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Court : Kerala

Decided On : Aug-13-2008

Reported in : 2008(3)KLJ173; 2008(3)KLT748

Judge : R. Basant, J.

Acts : Arms Act - Sections 27; Indian Penal Code (IPC) - Sections 149 and 326;
Code of Criminal Procedure (CrPC) - Sections 204, 204(1) and 482

Appeal No. : Crl. M.C. No. 3056 of 2008

Appellant : Sreekumar

Respondent : State of Kerala

Advocate for Def. : Gikku Jacob, PP

Advocate for Pet/Ap. : P.V. George (Puthiyidam), Adv.

Disposition : Petition allowed

Judgement :

ORDER

R. Basant, J.

1. Is a court which has chosen to exercise its discretion under Section 204 Cr.P.C. to issue a summons and not a warrant to an accused facing allegations of

commission of a non-bailable warrant offence justified or correct in remanding such an accused to custody when he appears in court despite the fact that he is willing to offer bail? This question is thrown up for consideration in this Cri.M.C.

2. The petitioner, along with the co-accused, faces allegations in a crime registered alleging offences punishable, inter alia, under Section 326 read with Section 149 IPC and Section 27 of the Arms Act. According to the petitioner, he is a cancer patient undergoing treatment from 2003. The police were not too convinced about the involvement of the petitioner or the need to arrest the petitioner. Considering the circumstances of the petitioner, the police, it is submitted, have filed a final report without formally arresting the petitioner and releasing him on bail. Final report has been filed. Cognizance has been taken. The learned Judicial Magistrate of the First Class-I, Punalur, has issued a summons to the petitioner under Section 204 Cr.P.C. The petitioner is to appear before the learned Magistrate on 26.8.08. He has now come to this Court with this petition seeking directions under Section 482 Cr.P.C.

3. What is the nature of directions that the petitioner wants? The learned Counsel for the petitioner submits that there is a practice in that court notwithstanding the fact that only a summons has been issued under Section 204 Cr.P.C. accused persons appearing in response to such summons will be remanded to custody for the short reason that the police have shown them as absconding. Apprehending the same treatment at the hands of the learned Magistrate, the petitioner has now come before this Court.

4. I find it difficult to accept that such practice can be in vogue in any court. I extract Section 204(1) Cr.P.C. below:

204. Issue of process.- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons-case he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may be issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(emphasis supplied)

When a court issued summons and not a warrant under Section 204 Cr.P.C. in a non-bailable warrant offence, I must assume that the learned Magistrate must have advisedly exercised the discretion under Section 204 Cr.P.C. to issue a summons and not a warrant. If a warrant were issued against him, the petitioner would certainly have been entitled, in the light of the dictum in *Bharat Chaudhary and Anr. v. State of Bihar* : 2003 CriLJ5038 , to move the superior courts for anticipatory bail. Having chosen to exercise the discretion under Section 204 Cr.P.C. in favour of the petitioner and having issued only a summons to the accused, it appears to me to be heartless, insensitive and harsh for any court to remand an accused person who has come to court on the invitation extended to him by the court by issuing a summons. That procedure is shockingly unreasonable and should not be pursued by any court. Having exercised the discretion under Section 204 Cr.P.C. to issue only a summons and having led the accused by such conduct to believe that he can safely appear before court on invitation, it would be impermissible for any court thereafter to turn turtle and remand the accused to custody. Issue of summons by exercise of the discretion under Section 204 Cr.P.C. does firmly and eloquently convey that the accused person on appearance shall not be detained unnecessarily if he is willing and prepared to offer bail. The courts will have to be careful at the stage of exercising the discretion under Section 204 Cr.P.C. and cannot take parties by surprise when they appear before court in response to an innocuous summons issued by the court. This must be so whether the offence is triable by a Magistrate or not and whether the offence is bailable or not.

5. I have no reason to assume that such a practice is in vogue. No user friendly and humane court can afford to ignore the tragic plight of an accused person who receives a summons from the court, goes in search of the court and gets

remanded to custody when he appears in court even though he is willing to offer bail. Such a person must certainly be granted bail when he appears and offers bail.

6. I do not, in these circumstances, want to issue any further directions under Section 482 Cr.P.C. as I do not assume or apprehend that the learned Magistrate would remand the petitioner to custody if he appears in response to the summons issued by the court and offers bail. This Cr.M.C. is dismissed with the above observations.

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