

Bineesh Vs. State of Kerala

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Court : Kerala

Decided On : Nov-05-2005

Reported in : 2006(1)KLT505

Judge : K. Thankappan, J.

Acts : Indian Penal Code (IPC) - Sections 34, 406, 409 and 420; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 73 and 160

Appeal No. : Crl.M.C. Nos. 3620 and 3568 of 2006

Appellant : Bineesh

Respondent : State of Kerala

Advocate for Def. : P.M.A. Kalam, Adv.

Advocate for Pet/Ap. : C.P. Udayabhanu, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K. Thankappan, J.

1. The common question raised in these two petitions is interesting and the actions which lead to filing of these petitions are unheard of the normal rules of practice

and the provisions of Cr. P.C. The petitioner is common in both these cases. The petitioner is the accused in Crime No. 526 of 2005 of Perumbavoor Police Station and Crime No. 456 of 2005 of Chavakkad Police Station. The above crimes were registered against the petitioner under Sections 406 & 420 read with Section 34, 409 and 406 IPC respectively. The petitioner has now approached this Court to quash two petitions and the consequential orders passed thereon by the respective courts. The petitioners are to have directions to get this petitioner in police custody on issuing production warrant or arrest warrant. The facts now revealed before this Court would show that the petitioner is also an accused in Crime No. 227 of 2005 of Mararikulam police station and the petitioner was arrested in connection with that case and he was remanded to judicial custody as ordered by that court. As the matter is pending before that court, police officers in these cases have made the requests to the Perumbavoor Magistrate's Court as well as the Magistrate Court, Chavakkad to issue production warrants against the petitioner and to hand over the petitioner to police custody for the purpose of investigation of the case. As per Section 73 of the Code, it is stated that a Magistrate's Court or a Chief Judicial Magistrate's Court shall issue an order of arrest warrant to arrest an escaped accused or a proclaimed offender to make arrest of such person who is within the local limits of that court for the purpose of the cases pending in that court. The facts now reveal that the petitioner is arrested in connection with Crime No. 227 of 2005 of Mararikulam Police Station. The applications' now filed are for issuing production warrant and to have the custody of the petitioner for interrogation for the purpose of the cases registered against the petitioner by the Perumbavoor Police as well as the Chavakkad Police. Hence this Court is not in a position to hold that the petitioner is evading arrest or escaping from the power of the police to arrest him or interrogate him for the purpose of the case registered but the police is not in a position to get the petitioner in custody to interrogate him for the purpose of investigation of the case and that is the reason why the police is trying to get the help of the court to get the petitioner in custody and produce him and hand over him to the police for interrogation. The attempt now made by the Police is to have the help of the court to complete the investigation or to interrogate the petitioner by issuing arrest warrants or production warrants. The question of jurisdiction of the Magistrate to

issue arrest warrant has been considered in the decision reported in Washeshar Nath Chad v. State 1993 CrL. L.J. 3082. The Delhi High Court held as follows:-

Where the Investigating Officer could not avail the benefit of Section 160 for interrogation of person as he was living abroad and not within the limits of his own or any adjoining station, an order by the Magistrate issuing non-bailable warrant for arrest under Section 73 against the person for being produced before the court so that the investigating Officer could join him in investigation was without jurisdiction and thus could not be issued when he was not evading arrest as he had offered to be available for interrogation at the place of his residence abroad.

Further, this question was considered by the Apex Court in the decision reported in State v. Dawood Ibrahim Kaskar : 1997 CriLJ2989 . The Apex Court held as follows:

Section 73 of the Code is of general application and that in course of the investigation can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and, is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation.

So the question now is that whether the courts of Perumbavoor and Chavakkad has got the power to issue a production warrant against the petitioner who is already arrested and detained in judicial custody by the Mararikulam Court. The power under Section 73 can be exercised by a Magistrate of the First Class only against a person who is within its local limits and also against a person who is evading arrest or escaping from arrest as an escaped accused. The petitioner in this case is not an escaped accused but is retained in judicial custody by a Court of competent jurisdiction. Hence the applications now filed by the officers are irregular and it cannot be entertained by the Magistrates concerned. Though the courts below are not empowered to issue such warrants, if the Investigating agency wants to have the custody of the petitioner for the purpose of interrogation in connection with the cases registered, the officers can have the indulgence of the court at which the court by which the petitioner is remanded.

2. With the above observations, these Crl. M.Cs. are allowed declaring that the request made by the police officers is irregular and orders, if any passed thereon by the court below shall become inoperative.

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