

Abdul Ajmal Vs. State of Kerala

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Court : Kerala

Decided On : Dec-02-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Abdul Ajmal

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN TUESDAY, THE 2D DAY OF DECEMBER 2014 11TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 2068 of 2014 ()
----- AGAINST THE

ORDER

IN CMP70462014 of J.M.F.C.,ALATHUR, DATED 13-11-2014 IN CRIME NO. 1268/2014 OF ALATHUR POLICE STATION , PALAKKAD. REVISION PETITIONER(S)/PETITIONER: ----- ABDUL AJMAL, AGED 28 YEARS, S/O.ABDUL REHIMAN, THEKKINTHODI HOUSE, VAVULLIAPURAM, KUNDUKAD, ALATHUR, PALAKKAD. BY ADV. SRI.V.A.JOHNSON (VARIKKAPPALLIL) RESPONDENT(S)/RESPONDENT & STATE: ----- STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM. BY PUBLIC PROSECUTOR SRI. N. SURESH THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02-12-2014, THE

COURT ON THE SAME DAY PASSED THE FOLLOWING: ss K. RAMAKRISHNAN, J.

..... Crl. R.P. No.2068 of 2014
..... Dated this the 2nd day of December,
2014

ORDER

The petitioner in C.M.P.No.7046/2014 on the file of the Judicial First Class Magistrate Court, Alathur, is the revision petitioner herein.

2. It is alleged in the petition that, the petitioner is the registered owner and in possession of tipper lorry with registration No.KL-49-1380, which was seized by Alathur police in Crime No.1268/2014 of that police station, alleging that, the vehicle has been used for illegal transport of river sand against the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (hereinafter called 'the Act'). The petitioner filed C. M.P.No.7046/2014 for interim custody of the vehicle and the learned magistrate allowed the application by the impugned order with conditions interalia Crl. R. P.No.2068 of 2014 2 to deposit 1/3rd of the value of the vehicle namely 95,000/-, as one of the conditions for releasing the vehicle. This condition is being challenged by the revision petitioner by filing this revision.

3. Considering the scope of enquiry and the respondent is only the State, this court felt that, the revision can be admitted and disposed of today itself, after hearing the counsel for the revision petitioner and the learned Public Prosecutor appearing for the respondent. So the revision is admitted and disposed of today itself.

4. The counsel for the revision petitioner submitted that, the court below had not considered the scope of Section '23A' of the Act and also the decision of this court in (2014 (3) KLT26 Aboobacker v. State of Kerala. So the amount directed to be deposited is excessive.

5. The learned Public Prosecutor supported the Crl. R. P.No.2068 of 2014 3 order passed by the court below.

6. It is an admitted fact that, the tipper lorry with No. KL-49-1380, of which the petitioner claims to be the owner, was seized by the Alathur police in connection with Crime No.1268/2014 of Alathur police station, alleging that, the vehicle has been used for illegal transport of river sand against the provisions of the above said Act. It is also an admitted fact that, the revision petitioner had filed C.M.P.No.7046/2014 for interim custody and the same was allowed with conditions inter alia, directing the petitioner to deposit 1/3rd of the value of the vehicle for releasing the vehicle. This condition is being challenged.

7. It appears that, the court below had while imposing the condition was in mind the decision reported in Shan V. State of Kerala (2010 (3) KLT413. After this, Section 23A was incorporated, which came into effect from 25.11.2012 and Section 23A(2) gives power to the Crl. R. P.No.2068 of 2014 4 magistrate to release the vehicle on such conditions, by ordering some security, and as per the proviso to that Section, the interim custody will be in force till the completion of the confiscation proceedings, if any initiated by the authorities under the Act. The scope of Section 23A of the Act has been considered by this court in the decision reported in (2014 (3) KLT26 Aboobacker v. State of Kerala, wherein, this court has held that, it is not always necessary to direct the party to deposit major portion of the amount and also furnish bank guarantee or property security for the purpose, but directing the petitioner to deposit some amount and execute the bond for the balance amount will be sufficient.

8. So considering the circumstances, this court feels that, condition directing the petitioner to deposit 1/3rd of the value of the vehicle namely 95,000/- can be modified, by directing the revision petitioner to deposit 15% Crl. R. P.No.2068 of 2014 5 of the value of the vehicle namely 14,250/- and execute a bond for the balance amount of 80,750/- with two solvent sureties, over and above the bond already mentioned as condition No.2, for releasing the vehicle and on further condition that, this order will be in force, till the confiscation proceedings under this Act, initiated by the authorities is complete, as provided under proviso to Section

23A (2) of the Act.

9. The condition of the lower court to deposit 1/3rd of the value of the vehicle namely 95,000/- is set aside and the same is modified as follows: The revision petitioner is directed to deposit 15% of the value of the vehicle namely 14,250/- and execute a bond for the balance amount of 80,750/- with two solvent sureties for the like sum each, to the satisfaction of the lower court over and above the bond as per condition No.1, executed and on further condition that the order will be in Crl. R. P.No.2068 of 2014 6 force till the completion of the confiscation proceedings if any has to be initiated under the Act as provided under Proviso to Section 23A(2) of the Act. With the above modification of the amount and further condition imposed as mentioned above, the revision petition is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court immediately. Sd/- K. RAMAKRISHNAN, (Judge) // True Copy // P.A. to Judge ss

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