

Faisal Vs. State of Kerala

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Court : Kerala

Decided On : Feb-18-2010

Reported in : 2010(2)KLT198

Judge : V. Ramkumar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 41(1) and 102

Appeal No. : Crl. R.P. No. 313 of 2010

Appellant : Faisal

Respondent : State of Kerala

Advocate for Def. : P.A. Salim, Public Prosecutor

Advocate for Pet/Ap. : C.V. Manuvilson,; P.K. Khaleemudheen,; P.G. Suresh,;

Judgement :

ORDER

V. Ramkumar, J.

1. Heard the learned Counsel for the petitioner as well as the learned Public Prosecutor.

2. As per Annexure A1 order dated 28.8.2009 passed in C.M.P. No. 6201 of 2009 in Tirur Crime No. 726 of 2009, the petitioner who was arrested on 21.8.2009

under Section 41(1)(d) r/w Section 102 Cr.P.C. for having been found in possession of a motorcycle suspected to be stolen, was granted bail by the Judicial First Class Magistrate, Tirur. As a matter of fact, except mentioning Sections 41(1)(d) and 102 Cr.P.C., no penal offence was incorporated in the report filed by the Sub Inspector of Police, Tirur either when the petitioner was produced before the Magistrate or thereafter and therefore, there was absolutely no justification for keeping custody of the petitioner beyond 24 hours. Instead, what was done was that he was remanded to judicial custody in flagrant violation of the decision of this Court in *Manikandan v. S.I. of Police* : 2008 (1) KLT 37.

Thereafter, he was released on bail as per Annexure A1 order dated 28.08.2009 where also the learned Magistrate imposed the onerous condition of sureties being required to produce the title deeds in respect of their property. The insistence of the title deeds to be produced by the sureties was also contrary to the decision reported in *Asokan v. C.I. of Police* 2010 (1) KHC 1 corresponding to 2010 (1) KLT 18 (C. No. 21). The Magistrate also directed the petitioner to report before the S.H.O., Tirur on all Fridays between 10 a.m. and 11 am with a further direction that the petitioner shall not commit similar offence while on bail. It is not known as to what was the offence committed by the petitioner so as to impose such a condition. Thereafter, the sureties who had complied with the above condition, sought return Of their original title deeds. The said application was allowed as per Annexure A2 order dated 10.09.2009 subject to two conditions. One of those conditions was issued not against the sureties but against the petitioner herein to produce documents to show that he is the owner of the motorcycle or that he was authorised to use the motorcycle. The sureties were permitted to apply for substitution with other persons as sureties. It is the condition imposed against the petitioner on the application of the sureties which has compelled the petitioner to come before this Court.

3. It is true that the petitioner was arrested by the Sub Inspector of Police, Tirur under the suspicion that the motorcycle which he was riding, was stolen. But subsequently, the police could not find out any offence against the petitioner which justifies the non-incorporation of any penal offence in the report filed by the police. According to the petitioner he was riding the motorcycle as permitted by his

nephew Abdul Hameed to whom the two wheeler was hypothecated by the owner one Afsal in a money transaction. The learned Magistrate appears to have overlooked the principles laid down in the aforesaid rulings. The learned Magistrate was in error in remanding the petitioner to judicial custody. The petitioner shall therefore, be deemed to have been released on his own personal bond and the matter should end here in the absence of any additional report in this case. The title deeds produced by the sureties shall be returned to them without any further liability either to the sureties or to the petitioner.

This revision is disposed of as above.

Dated this the 18th February, 2010.

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