

Abdul Gafoor. Vs. State of Kerala.

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Court : Kerala

Decided On : Dec-02-2010

Judge : M.Sasidharan Nambiar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 205, 313, 482

Appeal No. : Crl.MC.No. 4694 of 2010

Appellant : Abdul Gafoor.

Respondent : State of Kerala.

Advocate for Pet/Ap. : SRI.SUNNY MATHEW, Adv.

Judgement :

1. Petitioner, the accused in C.C.No.678/2005 on the file of Judicial First Class Magistrate's Court-I, Thrissur, filed C.M.P.No.5916/2010 under Section 205 of Code of Criminal Procedure seeking permanent exemption from personal appearance contending that he is permanently employed in Muscat and he has to rejoin duty before 17.10.2010 and he would undertake that his counsel will be present at the time of examination and evidence could be recorded in his absence and instead of the petitioner, questions under Section 313 of Code of Criminal Procedure would be answered by the counsel and he is prepared to appear before the court as and when required and in such circumstances, exemption is to be granted.

2. By Annexure-A1 order, learned Magistrate dismissed the petition holding that petitioner had originally appeared and thereafter absconded and then again appeared warranting a denova trial and he was released on bail and the denova trial had started and the reason for the delay in trial is failure of the petitioner to appear and if petitioner is not appearing at the time of examination of the witnesses, it would cause prejudice to both the accused and the prosecution and the case being a warrant trial case, exemption cannot be granted. This petition is filed under Section 482 of Code of Criminal Procedure to quash Annexure-A1 order and to grant exemption as sought for.

3. Learned counsel appearing for the petitioner and learned Public Prosecutor were heard.

4. In the petition filed by the petitioner before the learned Magistrate, in his affidavit, petitioner has undertaken that on his behalf his counsel will appear and evidence could be recorded in his absence in the presence of his counsel and he has authorised the counsel to cross-examine the witnesses and also to answer the questions under Section 313 of Code of Criminal Procedure and he will appear as and when required by the court. He has also undertaken that he will not dispute his identity at the time of trial.

5. Considering the nature of the affidavit filed and the undertaking of the petitioner that his counsel will appear on all the posting dates and he will appear as and when required and will not dispute his identity, I do not find it in the interest of justice to compel the petitioner to be in India and thereby deny his employment in Muscat, provided, sufficient assurance could be given for the presence of the petitioner as and when required by the Magistrate.

6. Petition is allowed. Annexure-I order is quashed. Judicial First Class Magistrate, Vadakara is directed to grant exemption as sought for in C.M.P.No.5916/2010 on the petitioner executing a bond for Rupees One lakh with two solvent sureties each for the like sum, out of which, one shall be a close relative of the petitioner like his parents, brother, sister or wife, undertaking that petitioner will appear as and when required by the court and will not challenge the evidence recorded in his absence.

