

Manoharan Vs. State of Kerala, Represented by Public Prosecutor

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Court : Kerala

Decided On : Apr-04-2012

Judge : M. Sasidharan Nambiar

Appeal No. : Bail Appl.No. 1998 of 2012

Appellant : Manoharan

Respondent : State of Kerala, Represented by Public Prosecutor

Judgement :

M. Sasidharan Nambiar, J.

1. Apprehending arrest in Crime 1123/2011 of Mathilakam Police Station registered for the offence under section 420 of Indian Penal Code petition is filed under section 438 of the Code of Criminal Procedure for anticipatory bail.

2. Case of the petitioner is that while he was at Abu Dhabi and was a partner of a firm the firm purchased building materials from one Al-Niyadi Trading Co. at Abudabi on credit basis and payments were made through cheques and the cheques were subsequently dishonoured and a complaint was filed by Al-Niyadi Trading Co. before the Federal Court Abudabi and on 11.4.2007 the Federal Court, passed its verdict convicting the petitioner and the other accused for one year imprisonment. But prior to the issuance of the cheque and the proceedings in the trial court, petitioner returned to India in 2006 and due to a massive cardiac attack he could not return back to Abu Dhabi. After the judgment while petitioner

has been in India based on a representative of Al-Niyadi Trading Company, a complaint was preferred before the Director General of Police based on which the crime is registered and petitioner apprehends arrest and he is prepared to abide by any condition and in the event of arrest, he be released on bail.

3. Learned counsel appearing for the petitioner and the learned Additional Director General of Prosecution were heard.

4. Learned counsel appearing for the petitioner submitted that for the dishonour of the cheque he was convicted by the Federal Court of Abu Dhabi evidenced by Ext.A1 judgment and in such circumstances petitioner cannot be prosecuted further and on that ground in the event of his arrest he be released on bail.

5. Learned Additional Director General of Prosecution opposed the petition and relying on the decision of this court in Rajan v. State of Kerala (2003 KHC 164) submitted that the facts are identical and the fact that petitioner was convicted by the Federal Court, Abudhabi is not a ground not to proceed against the petitioner under Indian law and in such circumstances petitioner cannot be granted anticipatory bail.

6. This court in Rajan's case(supra) upheld the legality of prosecution in India, though the accused was convicted by a court in UAE. In the nature of the offence alleged, petitioner cannot be granted anticipatory bail as sought for. Learned counsel then submitted that petitioner may be permitted to surrender before the Magistrate.

Petition is dismissed with liberty to the petitioner to surrender before the Magistrate and seek regular bail from the learned Magistrate.

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