

M.C. Thomas Vs. State of Kerala Represented by Public Prosecutor and Others

M.C. Thomas Vs. State of Kerala Represented by Public Prosecutor and Others

SooperKanoon Citation : sooperkanoon.com/947553

Court : Kerala

Decided On : Jan-10-2012

Judge : P.S. Gopinathan

Appeal No. : CRMC Petitions Nos.3222 & 3880 of 2011

Appellant : M.C. Thomas

Respondent : State of Kerala Represented by Public Prosecutor and Others

Judgement :

Common Order

1. Petitioner in CrI.M.C.No.3222/2011 is the 1st accused in C.C.99/2011, a complaint filed by the 5th respondent therein alleging offences under Section 418, 420 and 506(2) read with Section 34 I.P.C. CrI.M.C.No.3880/2011 was filed by the 2nd accused. Both of them seek to invoke jurisdiction of this Court under Section 482 of the Code of Criminal Procedure to quash the complaint with a plea that even by the averments in the complaint the offences alleged are not made out. Per contra, the learned counsel appearing for the complainant would submit that there are sufficient averments in the complaint to send the accused for trial.

2. Having heard either side, I find that it is needless for this Court to go deep into the dispute invoking jurisdiction under Section 482 Cr.P.C. because the petitioners

have got the remedy available under Section 245 of the Code of Criminal CrI.M.C.No.3222 and 3880/2011 2 Procedure. Going by Section 245(2) Cr.P.C, I find that even on the first day of the appearance itself, the petitioners can urge for a discharge, if there is no sufficient averment in the complaint to send them for trial. A reading of Section 245 Cr.P.C. Would be appropriate for better appraisal.

245. When accused shall be discharged -

(1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

Sub section (2) above would show that even before recording evidence under Section 244 Cr.P.C., the Magistrate can discharge the accused. Petitioners have not stated any reason for not resorting to that procedure. Therefore, I find no circumstance warranting to invoke jurisdiction under Section 482 of the Code of Criminal Procedure.

3. In the result, both these petitions are disposed of with liberty to the petitioners to apply for discharge under Section 245 of the Code of Criminal Procedure. Upon such petition being filed, the trial court shall dispose of the same before framing the charge. The learned counsel for the petitioners sought for exemption from personal appearance of the petitioners. This is a matter to be considered by the trial court. If any circumstance exists, it is for the petitioners to apply for exemption from personal appearance which the trial court shall dispose of on merits.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com