

(2023) 04 KL CK 0108

In the High Court Of Kerala

Case No : Transfer Petition (Crl.) No.27 of 2023

Dr. P.K. Asokan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 12-04-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 407(2)

Citation : (2023) 04 KL CK 0108

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Advocate : S.Rajeev, M.S.Aneer, V.Vinay, Sarath K.P., Prerith Philip Joseph, Noushad K.A., A.Ranjith Narayanan, T.Shajith, A.Simi

Final Decision : Dismissed

Judgement

Bechu Kurian Thomas, J.

1. This transfer petition is filed by the defacto complainant in Crime No.250/2023 seeking to transfer Crl.M.C.No.606/2023 on the files of the Principal Sessions Court, Kozhikode to any other court outside the District.

2. The learned counsel for the petitioner submitted that after this Court had set aside the order granting bail through Annexure-II and directed reconsideration after surrender of the accused, the learned Sessions Judge had, in gross disregard directed surrender of the accused on 10.04.2023 contrary to the directions of this Court to surrender forthwith. It is further pointed out that, despite this Court observing that the earlier order granting bail was perverse, the same perversity is being continued by ignoring the directions of this Court especially by extending the date of surrender to 10.04.2023. It was submitted that circumstances have rendered it not conducive for the same court to hear the matter and hence transfer of the case is essential.

3. The learned counsel for respondents 2 and 3 on the other hand contended that filing of a fresh bail application was done without noticing the true scope of

the word 'reconsider' in the order cancelling the bail and for the said mistake, respondents ought not to be prejudiced. It is further submitted that circumstances of the case do not warrant the transfer of the case especially in the light of proviso to Section 407(2) Cr.P.C., apart from the judgment of this Court in Surendra Kumar v. Vijayan [2005 KHC 1497].

4. I have considered the contentions.

5. Though the proviso to Section 407(2) bars transfer of a case from one criminal court to another in the same Sessions Division without applying for such a transfer to the Sessions Judge, I am of the view that in the nature of the reliefs sought for, the said restriction may not strictly apply as the relief sought is for a transfer outside the Session Division.

6. In this context, it is relevant to mention that this Court had suo motu decided to take up transfer of CrI.M.C.No.478/2023 on the files of the Sessions Court, Kozhikode and proceeded to hear both parties today on such a course of action also.

7. Taking note of the peculiar circumstances of the case, this Court had initially felt it necessary to consider transfer of the case from the Principal Sessions Court to another court. However, after hearing the learned counsel, I am of the view that since the courts are going to close for summer vacation on 13.04.2023, interests of justice demand that such a step be not adopted. Transferring the case on the eve of the summer holidays to another court can occasion prejudice to either of the parties. If the case is transferred to another court, the ensuing holiday can prevent consideration of the matter on time. Therefore such a course ought not be adopted.

8. Having considered the submissions of the learned counsel for the petitioner as well as the learned counsel for respondents 2 and 3 apart from the learned Public Prosecutor, I am of the view that since the Court is closing for vacations on 13.04.2023, it may not be conducive in the interest of justice to transfer CrI.M.C.No.606/2023 as well as CrI.M.C.No.478/2023 on its files to any other court.

9. While refraining from transferring CrI.M.C.No.606/2023 as well as CrI.M.C.No.478/2023 on the files of the Sessions Court, Kozhikode, it is observed that the stay of all further proceedings granted in CrI.M.C.No.606/2023 shall stand vacated. The learned Sessions Judge will be at liberty to consider the bail application on its merits. There is no reason to assume that while considering the applications, the learned Sessions Judge will not bear in mind the observation of this Court in CrI.M.C.No.2446/2023.

The transfer petition is dismissed.

The Registry shall forthwith convey to the learned Sessions Judge, the decision of this Court vacating the stay in CrI.M.C.No.606/2023.