
(2014) 08 KL CK 0209
In the High Court Of Kerala
Case No : Crl. MC. No. 4882 of 2014

Geetha

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 08 KL CK 0209

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : J. Abhilash, Advocate for the Appellant; S. Hyma, Public Prosecutor, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—This criminal miscellaneous case was filed by the petitioner, seeking direction to the court below under Section 482 of the Code of Criminal Procedure (hereinafter called "the Code").

2. It is alleged in the petition that, the petitioner is the sole accused in C.C. No. 362/2011 on the file of Judicial First Class Magistrate Court-III, Palakkad, which was taken on file on the basis of a private complaint filed by the complainant under Section 138 of the Negotiable Instruments Act (hereinafter called "the Act"). Earlier she entered appearance and she was released on bail. On all postings she was represented through counsel. On 20.08.2014, the case was posted for cross examination of the complainant and the petitioner filed an application for recalling the accused and for permission to recalling the complainant and permission to cross examine the complainant as held in the decision reported in 2014 (2) KHC 330 (SC) and the court below did not receive the petition and close the complainant's evidence and posted the case to the next day that is 21.08.2014 for questioning the accused under Section 313 of the Code. But on that day the petitioner could not appear, as her father was laid up due to cancer and not in a position to arrange an alternate to take her father to

hospital for treatment. So she instructed her counsel to make an application to condone her absence and an application was filed, but that was rejected and non-bailable warrant was issued, cancelling the bail bond. There is no breach of bail condition to cancel the bail, so the order dated 21.08.2014 is liable to be set aside.

3. Considering the nature of relief claimed in the petition, this court felt that, the petition can be disposed of at the admission stage itself, after hearing the learned counsel for the petitioner and the learned Public Prosecutor dispensing with notice to the 2nd respondent/defacto-complainant.

4. The learned counsel for the petitioner submitted that, she was represented throughout by the counsel and on a particular day, when it was posted for 313 examination, as she will have to accompany her father to hospital as he is a cancer patient and she could not appear in court and an application has been filed for that purpose. But that was rejected by the court below and non-bailable warrant was issued and her bail was cancelled and she prayed for allowing the petitioner to continue on the same bail bond.

5. The application was opposed by the learned Public Prosecutor.

6. It is seen from the petition itself that, though after taking bail she was not appearing in person, but represented through counsel on each posting day and her absence was condoned. But later when it was posted for 313 examination of the accused, she did not appear and she filed an application on that day also, but the learned Magistrate dismissed the application and cancelled the bail bond and issued non-bailable warrant to the accused and ordered notice to the sureties as well and directed the SHO to execute the warrant and produce the accused on or before 01.10.2014.

7. It is true that, when the counsel represented the petitioner, it cannot be normally said that she was deliberately not attending the court. But when it was posted for a particular purpose, on which date, the presence of the accused is required, then if she did not appear, court can reject the application and cancel the bail bond and take proceedings. Since bail bond has already been cancelled and notice has been issued to the sureties, this court feels that it is not proper to direct the petitioner to allow her to continue on the same bail bond. However, taking the lenient view, this court feels that, some leniency can be shown and some time can be given to the petitioner to surrender and seek for regular bail. The court below can consider the fact that, she filed the application for condone her absence, stating the reason for her non-appearance as she will have to accompany her father, who is suffering from cancer to the hospital and also considering the fact that, it is a bailable offence, consider and dispose of the bail application on the same date. So the petition is disposed of as follows:

The petitioner is directed to surrender before the Judicial First Class Magistrate Court-III, Palakkad, and move for recalling the warrant and release her on bail, within a week from today and if such an application is filed, taking into

consideration the observations made above, the learned magistrate is directed to consider and dispose of the bail application after hearing the counsel for the complainant and pass appropriate orders in that application on the date of filing of the application itself. For a period of one week, the coercive steps if any taken by the magistrate is directed to be kept in abeyance. Communicate this order to the court below, immediately. Handover the copy of the order to the counsel for the petitioner as well.