
(2014) 07 KL CK 0060
In the High Court Of Kerala
Case No : Crl. M.C. No. 3895 of 2014

Shibu Kunnanattu

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 34, 341, 427

Citation : (2014) 07 KL CK 0060

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : Babu S. Nair, Advocate for the Appellant; S. Hyma, Public Prosecutor, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—This is an application filed by the petitioner who is the 2nd accused in C.C.No.554/2011 pending before the Judicial First Class Magistrate, No-I, North Paravoor, to issue a direction to the magistrate under Section 482 of Code of Criminal Procedure.

2. It is alleged in the petition that petitioner is originally the 2nd accused in Crime No.9/2005 of Varappuzha Police Station alleging offences under Sections 341, 323, 427 read with Section 34 of Indian Penal Code. After investigation, final report was filed and the learned magistrate has taken cognizance of the offence and taken the case on file as C.C.No.554/11 on the file of the Judicial First Class Magistrate, No-I, North Paravoor. The summons issued by the court below was not received the petitioner as he went abroad in connection with employment. Consequent to the non appearance of the petitioner before the court below, the learned magistrate has issued non-bailable warrant against the petitioner. Now, non-bailable warrant is pending against him. Now, the petitioner is prepared to surrender before the learned magistrate and to co-operate with the proceedings. Though the petitioner is prepared to surrender, in view of the pendency of non bailable warrant against him, he apprehends that, he is likely to

be remanded and his bail application will not be considered on the date of filing of the application itself. So, the petitioner has no other remedy except to approach this Court seeking the following relief:

To direct the J.F.C.M-I, North Paravoor to recall the non-bailable warrant issued against the petitioner and the application for bail, to be filed by the petitioner, on his appearance, shall be considered on the same date of surrender, in the interests of justice.

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 Counsel for the petitioner and the learned Public Prosecutor.

4. Learned counsel for the petitioner submitted that his only apprehension is that if he surrenders, his bail application will not be considered on the same day and he will be remanded to custody.

5. The petition was opposed by the Public Prosecutor on the ground that the petitioner is an absconding accused.

6. It is an admitted fact that the petitioner is originally 2nd accused in Crime No.9/2005 of Varappuzha Police Station alleging offences under Sections 341, 323, 427 read with Section 34 of Indian Penal Code. After investigation, final report was filed and the learned magistrate has taken cognizance of the case and taken the case on file as C.C.No.554/11 on the file of the Judicial First Class Magistrate, No-I, North Paravoor. Consequent to the non appearance of the petitioner before the court below, the learned magistrate has issued non-bailable warrant against the petitioner. The apprehension of the petitioner that, if he surrenders before the court below and moves for bail, he will be remanded and his application will not be considered on the date of filing itself is not genuine and without any basis. This Court has time and again observed in several petitions of this nature that the Presiding Officers of the criminal courts are duty bound to dispose of the bail applications, if any, filed by the accused persons on their surrender on the date of filing of the application itself unless compelling circumstances warrant postponement of the same to a future date. So, in fact, there is no necessity to issue any direction as sought for in the petition. However, considering the apprehension expressed in the petition, this Court feels that the petition can be disposed of as follows:

If the petitioner surrenders before the Judicial First Class Magistrate Court No-I, North Paravoor and moves for recalling the warrant and for releasing him on bail in C.C.No.554/2011 (Crime No.9/2005 of Varappuzha Police Station), now pending before that court, then, the learned Magistrate is directed to consider and dispose of the bail application after hearing the Assistant Public Prosecutor of that court in accordance with law as far as possible on the date of filing of the application itself.

With the above direction and observation, the petition is disposed of.

Office is directed to communicate this order to the concerned court immediately.