

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

THURSDAY, THE 8TH DAY OF JANUARY 2015/18TH POUSHA, 1936

Cr1.MC.No. 90 of 2015

IN SC 533/2010 OF THE SESSIONS COURT, PATHANAMTHITTA

PETITIONER/2ND ACCUSED:

SHAJAN MANI, AGED 49 YEARS,
S/O. P.M.MANI, KIZHAMALIL VEEDU, PARAMPUZHA,
PERUNAICKADU VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT.

BY ADVS.SRI.T.P.PRADEEP
SRI.P.K.SATHEES KUMAR

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 08-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Cr1.MC.No. 90 of 2015

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURES A - COPY OF THE FINAL REPORT IN SC NO. 533/2010 OF THE
SESSIONS COURT, PATHANAMTHITTA.

ANNEXURE B - COPY OF THE MEDICAL CERTIFICATE ISSUED FROM THE BSE
HOSPITAL, LUCKNOW DT. 24.10.14.

ANNEXURE C - CERTIFIED COPY OF THE ABSENT APPLICATION DT.
20.10.14.

ANNEXURE D - CERTIFIED COPY OF THE ORDER DT. 20.10.14 IN CRL.M.P
NO. 3526/14.

ANNEXURE E - CERTIFIED COPY OF THE PROCEEDINGS IN SESSIONS CASE
NO. 533/2010.

RESPONDENT'S ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

Crl.M.C No.90 of 2015

Dated this the 8th day of January, 2015

O R D E R

The petitioner herein is the second accused in S.C No.533/2010 of the Court of Session, Pathanamthitta. The offence involved in the case is under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (for short 'SC/ST Act').

2. On the apprehension of arrest and remand to judicial custody, in execution of a warrant of arrest issued from the court below, the petitioner seeks orders under Section 482 of the Code of Criminal Procedure, quashing Annexure D order, consequent to which warrant of arrest was issued against him. It is submitted that unfortunately the petitioner could not appear in court on a day only because he was admitted in a hospital at Lucknow. The learned counsel for the petitioner submits that serious allegations are not in fact there against the petitioner herein, and that the allegations in the final report will not attract a prosecution under Section 3(1)(x) of the SC/ST Act. This grievance will have to be seriously considered by the trial court.

I do not think that this is a case of consistent absence during trial. Absence on one or two posting dates cannot be seriously taken by the trial court, and when application is filed to excuse absence, the reasons stated by the accused will have to be considered by the trial court. I do not think that the learned Sessions Judge will mechanically remand the petitioner to judicial custody when he appears or surrenders. If he has satisfactory explanation for his absence, he can very well make application for bail afresh, and it will be considered by the trial court. The petitioner's grievance, and also his explanation for his absence, will have to be considered, and the trial court shall also consider his submission that necessary elements and ingredients of the offence under Section 3(1)(x) of the SC/ST Act are not there in the FIR and in the final report. If the petitioner has satisfactory explanation for his absence, which of course was not consistent at all, he can be released on bail, on appropriate conditions. However, the petitioner will have to surrender before the learned Sessions Judge and make application for bail afresh.

In the result, this Criminal Miscellaneous Case is closed with a direction to the court below that if application for

bail is filed by the petitioner, on surrender in S.C No.533/2010, the same shall be judiciously considered, his grievance including the reason for his absence shall also be seriously considered, and appropriate decision in the matter of bail shall be taken on the date of surrender itself. The petitioner is granted time for ten days to surrender before the trial court and make application for bail. In the meantime, execution of the warrant of arrest will stand suspended. As regards the relief sought with respect to the steps taken by the court against the sureties, this Court observes that in the particular facts and circumstances stated above, appropriate judicious decision shall be taken by the trial court as to whether such procedure is absolutely necessary against the sureties.

**P.UBAID
JUDGE**

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