

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 21ST DAY OF JANUARY 2015/1ST MAGHA, 1936

Crl.MC.No. 148 of 2015 ()

AGAINST THE JUDGMENT IN CC 71/2014 of JUDICIAL FIRST CLASS MAGISTRATE
COURT, KALADY DATED 28-10-2014

PETITIONER(S)/APPELLANT/ACCUSED:

RATHEESH AGED 30 YEARS
S/O.RAVI, CHETTIKKATTIL HOUSE, MALAYATTOOR
ALUVATALUK, ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT(S)/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HONOURABLEHIGH COURT OF KERALA AT ERNAKULAM
THROUGH SUBINSPECTOR OF POLICE
KALADY POLICE STATION
ERNAKULAM DISTRICT PIN - 682 035.

BY ADV. PUBLIC PROSECUTOR SMT.S.HYMA

THIS CRIMINAL . CASE HAVING COME UP FOR ADMISSION ON
21-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 148 of 2015 ()

APPENDIX

PETITIONER(S)' EXHIBITS

ANNEXURE-1: TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.383/2014 OF KALADY POLICE STATION.

ANNEXURE-2: TRUE COPY OF THE FINAL REPORT IN CRIME NO.383/2014 OF KALADY POLICE STATION WHICH IS RECEIVED ON FILE AS C.C.NO.71 OF 2014 ON THE FILE OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KALADY.

ANNEXURE-3: TRUE COPY OF THE ORDER DATED 18.7.2013 ISSUED BY THE INSPECTOR GENERAL OF POLICE, KOCHI RANGE AGAINST THE PETITIONER

ANNEXURE-4: TRUE COPY OF THE JUDGEMENT DATED 28.10.2014 IN C C NO.71/2014 ON THE FILE OF THE JUDICIAL FIRST CLASS MAGISTRTE COURT, KALADY.

ANNEXURE-5: TRUE COPY OF THE ORDER DATED 12.11.2014 IN CRL.MP NO.2435 OF 2014 IN CRL.APPEAL NO.505 OF 2014 ON THE FILE OF THE DISTRICT AND SESSIONS COURT, ERNAKULAM.

RESPONDENT(S)' EXHIBITS

/TRUE COPY/

P.S TO JUDGE

P.UBAID, J.

~~~~~

**Crl.M.C No.148 of 2015**

~~~~~

Dated this the 21st January, 2015

ORDER

The petitioner herein stands convicted and sentenced under Section 15 (4) of the Kerala Anti Social Prevention Act (KAPA). The sentence imposed by the learned Judicial First Class Magistrate Court, Kalady is simple imprisonment for three years. Aggrieved by the conviction and sentence, he preferred appeal before the Court of Session, Ernakulam as Crl.A No.505 of 2014. An application filed by him as Crl.M.P. No.2435 of 2014 for suspension of sentence under Section 389 (1) of the Code of Criminal Procedure was dismissed by the learned Sessions Judge on the ground that the offence is very serious and that he has been in judicial custody throughout the proceeding. The said order of dismissal dated 12.11.2014 is under challenge here.

2. As required by this Court, the Sub Inspector of Police, Kalady submitted a report through the learned Public Prosecutor. This report shows that the petitioner herein is accused in so many crimes involving very serious offences including abduction, dacoity, murder, attempt to murder, etc.

It is also reported that he stands classified as 'Known Rowdy' in police records. It is alleged that the offence alleged against him now under the KAPA, was in fact committed in the flagrant violation of the lawful direction made by the authorities. Anyway, that is a matter to be considered by the appellate court. In the special circumstances, I find that dismissal of the application for suspension of sentence is justified. Discretion under Section 389 (1) of the Code of Criminal Procedure cannot be exercised in favour of such persons who have no regard for rule of law. It will suffice that his appeal is disposed of without delay by the Court of Session. Till then he will have to continue in custody. I find that the application was rightly dismissed by the learned Sessions Judge. I find no reason or ground to interfere in the orders passed by the learned Sessions Judge.

In the result, this Crl.M.C is dismissed *in limine* without being admitted to files. However, the learned Sessions Judge, Ernakulam is directed that the appeal preferred by the petitioner herein shall be heard and disposed of at the earliest, if possible, within three months.

**Sd/-
P.UBAID
JUDGE**

ma

/True copy/

P.S to Judge