

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

Crl.MC.No. 3790 of 2015

**C.M.P.NO.2583/2015 OF CHIEF JUDICIAL MAGISTRATE'S COURT, KASARAGOD
CRIME NO. 740/2010 OF KASARAGOD POLICE STATION , KASARAGOD DISTRICT**

PETITIONER(S)/6TH ACCUSED :

**SHAFEEQUE @ CHEPPU, AGED 27 YEARS,
S/O.P.K.MUHAMMED, RESIDING AT P.K.HOUSE,
SANTHOSH NAGAR, CHENGALA VILLAGE, KASARAGOD TALUK,
KASARAGOD DISTRICT.**

**BY ADVS.SRI.T.MADHU
SMT.C.R.SARADAMANI**

RESPONDENT(S)/STATE :

- 1. THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**
- 2. THE STATION HOUSE OFFICER,
KASARAGOD POLICE STATION, KASARAGOD DISTRICT,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM - 682 031.**

BY PUBLIC PROSECUTOR SMT.S.HYMA

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 24-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' ANNEXURES :

- ANNEXURE A1:** THE TRUE COPY OF THE FIR IN CRIME NO.740/2010 OF KASARAGOD POLICE STATION.
- ANNEXURE A2:** THE TRUE COPY OF THE ORDER DATED 03/08/2010 IN BA NO.4463/2010 ON THE FILE OF THIS HON'BLE COURT.
- ANNEXURE A3:** THE TRUE COPY OF THE MEMO DATED 05/08/2010 FILED ON BEHALF OF THE PETITIONER BY THE COUNSEL FOR THE PETITIONER BEFORE THE LEARNED CHIEF JUDICIAL MAGISTRATE'S COURT, KASARAGOD.
- ANNEXURE A4:** THE TRUE CERTIFIED COPY OF THE ORDER DATED 19/06/2015 IN C.M.P NO.2583/2015 ON THE FILE OF THE LEARNED CHIEF JUDICIAL MAGISTRATE'S COURT, KASARAGOD.

RESPONDENT(S)' ANNEXURES :

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

ALEXANDER THOMAS, J.

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Crl.M.C.No. 3790 of 2015

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Dated this the 24th day of June, 2015

O R D E R

The order under challenge is at Anx.A-4 rendered on 19.6.2015 in Crl.M.P.No.2583/2015 on Crime No.740/2010 of Kasargod Police Station, registered for offences under Secs.143, 147, 148, 341, 323, 324, 153(A) read with Sec.149 of the I.P.C. The petitioner's request for release of his passport, which was surrendered before the court below, was declined on the ground that the final report in the case has not so far been filed and also on the ground that the petitioner had surrendered his passport as per condition No.7 of Anx.A-2 bail order granted by this Court and therefore it was held that the court below is not in a position to alter the said condition and that the petitioner has to approach this Court.

2. Heard Sri.T.Madhu, learned counsel for the petitioner and the learned Public Prosecutor appearing for the respondents.

3. It is pointed out that the crime in question was registered as early as on 7.7.2010 and even after the expiry of more

than five years, the final report has not yet been filed as the requisite sanction under Sec.153(A) of the I.P.C. has not yet been obtained and that there is no chance of framing the charge by the court in the above said case in the near future and that therefore the petitioner filed the petition before this Court praying for orders for release of his passport for a period of six months to enable him to go abroad to join for employment. It is contended by Sri.T.Madhu, learned counsel for the petitioner that the impugned finding of the court below that since condition to surrender passport was imposed by this Court in Anx.A-2 bail order dated 3.8.2010, the court below is therefore not competent to consider the prayer of the petitioner, is not correct in view of the decision of this Court in Asok Kumar v. State of Kerala reported in 2009 (2) KLT 712.

3. This Court has held in paragraphs 3 and 4 of Asok Kumar's case supra that in view of the Government of India gazette notification No. No.G.S.R. 570(E) dated 25.8.1993 (published in the Gazette of India, Extra. Part II S.3(i) dated 25.8.1993) issued by the Central Government under cl.(a) of S.22 of the Passports Act, 1967, only if the criminal court before which, the case of the applicant is pending permits him to depart from India, will the applicant be

exempted from the operation of the provisions of cl.(f) of subs.(2) of S.6 of the said Act and that the same shall be subject to condition such as the period specified by the Court for the issue of passport, etc. This Court held in that ruling that in the normal case, the Calandar Cases are not likely to come up for trial at least for a period of 9 or 10 months and that therefore, there is no justification on the part of the Magistrate in refusing the permission sought for to go abroad for a period of six months, etc. Paragraphs 3 and 4 of the above said decision read as follows:

'3. It is alleged that the petitioner is an advocate by profession and having 29 years of practice as a lawyer and that the aforesaid crimes came to be registered against him due to political animosity. As per C.M.P. Nos.1140 and 1141 of 2009 in C.C.Nos. 236 and 225 of 2008 respectively, the petitioner moved the Magistrate under S.22(a) of the Passports Act, 1967 seeking permission to travel outside India for a period of six months. According to the petitioner, he has been chosen to appear for the Interpol India to defend a case.

The permission was sought in accordance with notification No.G.S.R. 570(E) dated 25.8.1993 (published in the Gazette of India, Extra. Part II S.3(i) dated 25.8.1993) issued by the Central Government under cl.(a) of S. 22 of the Passports Act, 1967. As per the said notification it is only if the criminal Court before which the case of the applicant is pending permits him to depart from India, will the applicant be exempted from the operation of the provisions of cl. (f) of subs.(2) of S.6 of the said Act and the same shall be, subject to conditions such as the period specified by the Court for the issue of Passport etc.

The said notification reads as follows:-

"In exercise of the powers conferred by cl.(a) of S.22 of the Passports Act, 1967 (15 of 1967) and in supersession of the notification of the Government of India in the Ministry of External Affairs No.G.S.R. 298(E), dated the 14th April, 1976, the Central Government, being of the opinion that it is necessary in public interest to do so, hereby exempts citizens of India against whom proceedings in respect of an offence alleged to have been

committed by them are pending before a criminal court in India and who produce orders from the court concerned permitting them to depart from India, from the operation of the provisions of cl.(f) of sub-s. (2) of S.6 of the said Act, subject to the following conditions, namely:-

- (a) the passport to be issued to every such citizen shall be issued-*
 - (i) for the period specified in order of the court referred to above, if the court specified a period for which the passport has to be issued; or*
 - (ii) if no period either for the issue of the passport or for the travel abroad is specified in such order, the passport shall be issued for a period one year;*
 - (iii) if such order gives permission to travel abroad for a period less than one year, but does not specify the period of validity of the passport, the passport shall be issued for one year; or*
 - (iv) if such order gives permission to travel abroad for a period exceeding one year, and does not specify the validity of the passport, then the passport shall be issued for the period of travel abroad specified in the order.*
- (b) any passport issued in terms of (a)(ii) and (a)(iii) above can be further renewed for one year at a time, provided the applicant has not travelled abroad for the period sanctioned by the Court; and provided further that, in the meantime, the order of the court is not cancelled or modified;*
- (c) any passport issued in terms of a(i) above can be further renewed only on the basis of a fresh court order specifying a further period of validity of the passport or specifying a period for travel abroad.*
- (d) the said citizen shall give an undertaking in writing to the passport-issuing authority that he shall if required by the court concerned appear before at any time during the continuance in force of the passport so issued."*

S.6(2)(f) of the Passports Act, 1967 reads as follows:-

"6(2). *Subject to the other provisions of this Act, the passport authority shall refuse to issue a passport or travel document for visiting any foreign country under cl.(c) of sub-s.(2) of S.5 on any one or more of the following grounds, and on no other ground, namely:-*

- (a)*;
- (b)*;
- (c)*;
- (d)*;
- (e).....;*

(f) *that proceedings in respect of an offence alleged to have been committed by the applicant are pending before a criminal court in India;*

(g);

(h) ”

4. In the normal course the above C.C. cases are not likely to come up for trial at least for a period of 9 or 10 months. Hence there was no justification on the part of the Magistrate in refusing the permission sought for to go abroad for a period of six months.'

4. In the light of the above said ruling of this Court, the impugned Anx.A-4 rejection order is set aside. Crl.M.P.No.2583/2015 in Crime No.740/2010 of Kasargod Police Station shall stand remitted to the court below for consideration afresh. It will be open to the court to consider the plea of the petitioner on merits and take a decision thereon after granting reasonable opportunity of being heard to the petitioner through his counsel, if any, and the Public Prosecutor appearing the investigating officer and if the court below is convinced about the need of the petitioner to travel abroad is bona fide, then the same may be considered in the light of ruling of this Court in Asok Kumar v. State of Kerala reported in 2009 (2) KLT 712.

With these observations and directions, the Crl.M.C. stands finally disposed of.

Sd/-

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ALEXANDER THOMAS, JUDGE

///True copy///

P.S. to Judge

Cr1.M.C.3790/15

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