

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 23RD DAY OF NOVEMBER 2015/2ND AGRAHAYANA, 1937

CrI.MC.No. 5859 of 2015 ()

CC 2707/2012 of J.M.F.C.-II, KOCHI
CRIME NO.322/2011 OF THOPPUMPADY POLICE STATION, ERNAKULAM

PETITIONER(S)/ACCUSED NOS.1 & 2:

1. K.J.ALBERT AUGUSTINE, AGED 68 YEARS
PENSIONER, KONNOTH(H), C.C.NO.18/2324 A
KOCHUPALLY ROAD, THOPUMPADY, RAMESWARAM VILLAGE
KOCHI TALUK, ERNAKULAM DISTRICT
PRESENT ADDRESS FOR COMMUNICATION IS C/O.K.J.STANY
KONNOTH(H), KOOTTUNGAL LANE, THOPUMPADY
KOCHI TALUK, ERNAKULAM DISTRICT, PIN-682 005.
2. JESSY ALBERT
W/O.K.J.AUGUSTINE, KONNOTH(H), C.C.NO.18/2324 A
KOCHUPALLY ROAD, THOPUMPADY, RAMESWARAM VILLAGE
KOCHI TALUK, ERNAKULAM DISTRICT
PRESENT ADDRESS FOR COMMUNICATION IS C/O.K.J.STANY
KONNOTH(H), KOOTTUNGAL LANE, THOPUMPADY
KOCHI TALUK, ERNAKULAM DISTRICT, PIN-682 005.

BY ADV. SRI.LIJOY P.VARGHESE

RESPONDENT(S)/COMPLAINANT:

STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 23-11-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.MC.No. 5859 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

ANNEXURE 1- TRUE COPY OF THE ORDER DATED 01.08.2011 OF THE HONOURABLE
HIGH COURT OF KERALA IN BAIL APPLICATION NO.5218/2011.

RESPONDENT(S) ' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

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K. RAMAKRISHNAN, J.

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Crl.M.C.No.5859 of 2015

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Dated this the 23rd day of November, 2015

O R D E R

This application is filed by the petitioner who are accused nos. 1 and 2 in C.C.No.2707 of 2012 challenging the order of the court below initiating steps under Sections 482 of Cr.P.C. It is alleged that the petitioner that 1st petitioner who was badly in need of money had obtained loan from the de facto complainant, namely Rehna Dilshad. On the basis of complaint given by her, Thoppumpady Police has registered a crime as Crime No.322 of 2011 of Thoppumpady Police Station under Sections 406, 420 read with Section 34 of Indian Penal Code against the petitioner and others. Petitioner filed W.P.(C).No.10287 of 2015 alleging that the 6th respondent who is the de facto complainant in the case namely crime no. 322 of 2011 is a money lender and he is harassing the petitioners and others. On that basis the crime was registered and the

complainant was pending with the Assistant Commissioner of Police, Crime Detachment, Ernakulam. Since no action was taken by the Assistant Commissioner in this regard. Petitioner filed W.P.(C).No.10287 of 2015 to expedite enquiry in that complaint. The petitioner is accused in some other cases also and they were granted anticipatory bail by this court as per order in bail application no. 5218 of 2011 and they were appearing in other cases pending against them before the same Magistrate. Anticipatory bail is granted by this court as per order in bail application No.5218 of 2011 and they appeared before the investigating officer in Crime No.322 of 2011 of Thoppumpady Police Station and bail was granted. But after final report was filed, the case was taken on file as C.C.NO.2707 of 2012 on the file of the Judicial First Class Magistrate Court-II, Kochi and they have not received any summons in the case. Relying on the report of the Police

Officer that they were absconding. The learned Magistrate issued non bailable warrant and those non bailable warrants are also returned unexecuted by the station house officer without proper enquiry showing that they are absconding. Now court below had initiated proceedings under Sections 82 and 83 of the Cr.P.C. and non bailable warrants are issued. The case against them was split up and the Police is also taking steps to issue look out notice against the them. So the petition has no other remedy except approach this court seeking the following reliefs.

2. Heard the counsel for the petitioner Sri.Lijoy Parackal Varghese and the Public Prosecutor Smt.Seena Ramakrishan for the State.

3. Counsel for the petitioner submits that he has already moved this court by filing a writ petition as no action was taken on the basis of the complaint filed by him regarding 'operation kubera' in respect of the de facto

complainant alleging that he is a money lender and anticipatory bail was granted to the petitioners and they surrendered before the investigating officer and bail was granted to them. Thereafter they did not receive any summons and they are prepared to surrender and till the investigation in the application filed by them in the 'operation kubera' matter, the matter has been stayed or some time will have to be given to them for surrender. Till then the coercive steps will not be kept in abeyance. The learned Public Prosecutor submits that there is no merit in the application and since the petitioner did not appear, the court below was perfectly justified in initially proceeding against the petitioner, to secure his presence.

5. A report was called for from the Judicial First Class Magistrate Court-II, Kochi in this regard that is also considered.

6. It is an admitted fact that on the basis of complaint

given by the de facto complainant namely Rehna Dilshad, a crime was registered as Crime No.322 of 2011 of Thoppumpady Police Station against the petitioner and others alleging offences under Sections 406, 420 read with Section 34 of Indian Penal Code. It is also seen from the documents produced namely Annexure-1 that the petitioners herein moved for anticipatory bail and this court has granted anticipatory bail as per order in bail application no. 5218 of 2011 and according to the petitioners they surrendered before the investigating officer and they were released on bail on the basis of the anticipatory bail granted by this court. It is also seen from the averments in the petition and also report of the Judicial First Class Magistrate Court-II, Kochi and after investigation final report was filed before that court and the case was taken on file as C.C.No. 2707 of 2012. It is from the report that since the petitioners did not appear coercive steps have

been taken as per order dated 07.01.2015 and thereafter the case against them was split up and charge was framed against the remaining accused namely accused nos.3 to 7 and summons has been issued to the witnesses. It was at that time, the petitioners moved this court and obtained the same is the gist of the report.

7. The grievance of the petitioners is that they have not received summons in the case and the Police Officers have falsely made a report to the court that they are absconding and it was on that basis that the court below had proceeded with coercive steps against them. Further it is also alleged in the petition that the petitioner filed W.P. (C).No.10287 of 2015 to issue direction to the Assistant Commissioner or Police, Crime Detachment, Ernakulam, to conduct expedite enquiry in the petition alleged have been filed by them against the de facto complainant alleging harassment at the hands of unauthorised money lenders.

But it was fairly conceded by the counsel for the petitioner that there was no stay obtained regarding proceeding in the criminal case namely C.C.No.2707 of 2012 pending before the Judicial First Class Magistrate Court-II, Kochi. So under the circumstances, the prayer no.2 cannot be granted in this petition as the remedy of the petitioner is to move the writ court, where the writ petition is pending, regarding his grievance and satisfy that court and get a stay, if at all it is required. So the prayer no.2 in the petition cannot be granted by this court in this application.

8. As regards the other grievance that the petitioner did not receive summons in the case and court below had wrongly issued a non bailable warrant and initiated proceedings against them under Sections 82 and 83 of Cr.P.C. also or matters to be considered by that court on their surrender before that court and moving for bail. So under the circumstances, this court feels that the petition

can be disposed of as follows. The relief claimed as prayer no.2 cannot be granted by this Court in this proceedings, as Writ Petition No.10287 of 2015 is pending before the writ court in respect of that matter and it is for that court to consider regarding this prayer. If the petitioners surrendered before the Judicial First Class Magistrate Court-II, Kochi on or before 21.12.2015 and those for recalling the warrant and the coercive steps and release him on bail. Then the learned Magistrate is directed to consider and disposed of those application as far as possible on the date of filing of the application itself after hearing the Assistant Public Prosecutor of that court in accordance with law. Till then the coercive steps issued against the petitioner is directed to be kept in abeyance. If the petitioners did not surrender as directed this court then court below is at liberty to proceed with the coercive steps initiated to procure the presence of the petitioner with the

above directions and observations, the petition is disposed of. Office is directed to communicate this order to the concerned court immediately. Interim order granted is vacated and Crl.M.A.No. 8617 of 2015 is dismissed.

K.RAMAKRISHNAN
JUDGE

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