

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 1ST DAY OF DECEMBER 2015/10TH AGRAHAYANA, 1937

Tr.P(Cr1.).No. 71 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN ST 6/2015 of JUDL.MAGI.OF 1ST CLASS,
ANDROTH DATED

PETITIONER(S)/ACCUSED:

P.N.HABEEB,
GENERAL PURPOSE CREW,
OFFICE OF THE ASSISTANT DIRECTOR OF LAKSHADWEEP PORT,
BEYPORE, KOZHIKODE-673 001.

BY ADV. SRI.NIRMAL. S

RESPONDENT(S)/COMPLAINANT:

THE UNION TERRITORY OF LAKSHADWEEP,
REP. BY STANDING COUNSEL
HIGH COURT OF KERALA-682 036.

BY ADV. SRI.S.RADHAKRISHNAN,SC,LAKSHADWEEP ADMN.

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON
01-12-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SS

K. RAMAKRISHNAN, J.

T.R.P.(Crl.)No.71 of 2015

Dated this the 1st day of December, 2015

ORDER

This is an application for transfer of STC 6/2015 on the file of the Judicial First Class Magistrate Court, Andrott, to Judicial First Class Magistrate Court, Kozhikode, under Section 407 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is the accused in STC 6/2015 before the Judicial First Class Magistrate Court, Andrott, which was suo-moto registered by the magistrate against the petitioner under Section 4 of Lakshadweep Prohibition Regulation Act, 1979. He was surprised on receipt of the summons as well as the memorandum as such an allegation against him, is absolutely false and baseless. If the learned magistrate has got an occasion to believe that the petitioner was under the influence of alcohol on that day, he could have very well

produced and handed over him to the police or reported to the concerned authorities then and there. The crime has been registered against the petitioner almost after a month of the alleged incident by the magistrate suo-moto. The magistrate should not have taken such a drastic measure against the petitioner. He apprehends that, if the case is tried by the same magistrate, his interest will be affected. Further the incident occurred at Beypore port within the jurisdiction of Kozhikode. So it is necessary in the interest of justice to transfer the case to Judicial First Class Magistrate Court, Kozhikode. Hence the petition.

3. A report has been called for from the learned magistrate and the magistrate has sent a report, which reads as follows:

“On 14.05.2015, I was a passenger in M.V.Minicoy ship sailed from Beypore to Androth. When I entered the ship, it was noticed that one person standing inside the ship was under the influence of alcohol. Two police personnel namely Satheesan and Balan of Lakshadweep

police unit at Beypore were in the ship at the time of my embarkation. They told me that the person standing in tipsy mood is Mr.Habeeb, Welfare Officer of that ship. He was not in uniform at that time. When the ship started sailing to Lakshadweep islands, he was under the influence of alcohol. When I was proceeding to Owner's Cabin allotted to me, he was standing near the door and smell of alcohol could be perceived by me while he was talking to a ship employee in uniform. In addition to the above, he was not in a position to stand properly due to tipsy mood. Offence u/s.4 of the Lakshadweep Prohibition Regulation, 1979 is attracted if anybody is found in an intoxicated state in any public place. Therefore, after reaching Androth on 15.05.2015, I took cognizance suo moto on 19.05.2015 and not after one month as stated in the transfer petition.

With regard to the jurisdiction, I may submit that the offence committed by the petitioner was in a ship owned by the Lakshadweep Administration and that ship was sailing to Kalpeni and Androth islands coming under the jurisdiction of the Judicial First Class Magistrate, Androth. Besides the above, even though the accused was found in tipsy mood for the first time at Beypore port, he was in tipsy mood during the voyage to the above islands. Therefore, he was found committed an offence u/s.4 of the aforesaid Regulation within the jurisdiction of the Judicial First Class Magistrate, Androth.

In this connection I may submit that as per Sec.183 Cr.P.C., when an offence is committed whilst the person is in the course of performing a journey or voyage, the offence may be inquired into or tried by a court through or into whose local jurisdiction that person passed in the course of that journey or voyage. In fact, cognizance taken by me was in the light of Sec.183 Cr.P.C and as per the power given to the Magistrate under clause(c) of Sub-section(1) of Sec.190 Cr.P.C.

I may submit that I have not tried the case as stated in the transfer petition. After taking cognizance on 19.05.15, summons was issued for appearance on 11.06.2015. He was absent on 11.06.15 and was represented by a Mukthian. So, it was adjourned to 04.08.15. On that day also he was absent and the case was adjourned to 15.09.15. Stay order of the Hon'ble High Court was received in the court only on 10.08.15. He has not appeared before the court so far. Therefore, he could not be informed that he is entitled to have the case inquired into or tried by another Magistrate. If he has objection in proceeding further, he is at liberty to apply u/s.191 Cr.P.C for transfer of this case to another magistrate.

I may further submit that I have no acquaintance with the said person and I met him for the first time only on that day. Cognizance taken by me was upon my own knowledge under clause(c) of sub-section(1) of Sec.190

Cr.P.C. It was not on the basis of false and baseless allegation as stated in the petition. Since I took cognizance upon my own knowledge, there was no need to hand over that person to the police as stated in the petition. After taking cognizance, I have reported the same to the Director (Port, Shipping & Aviation), Kavarathi. For the purpose of taking cognizance, non-wearing of uniform by the petitioner was not taken into account by me. In fact no drastic measure was taken by me as stated in the petition”.

4. When the application came up for hearing today, Sri.S.Radhakrishnan, Special Public Prosecutor appearing for the respondent submitted that, they have no objection in transferring the case to any other court in the island itself, namely Judicial First Class Magistrate Court, Ameni. The Special Public Prosecutor also submitted that, he is an employee of Lakshadweep and if the case is transferred to Kozhikode, entire officials will have to travel to Kozhikode, that will cause unnecessary difficulty to them.

5. On the other hand, the counsel for the petitioner submitted that his wife and children are in

Beyepore. So it is better that the case be transferred to Beyepore. According to the learned counsel that the incident occurred within the jurisdiction of Beyepore and not in Lakshadweep.

6. On going through the allegations in the petition, what is stated is that, since the case has been suo-moto taken by the learned magistrate, he apprehends that, if it is continued in that court, he will not get justice. On going through the report also, it also appears that, the case was suo-moto taken by the learned magistrate alleged to have seen the petitioner in the vessel after consuming alcohol. However, whether the incident occurred within the jurisdiction of Beyepore or the provisions of the Act under which the case has been taken cognizance etc., are matter for evidence. So that cannot be considered at this stage. Further, since he is working in Lakshadweep, no hardship will be caused to the petitioner, if the trial is allowed to

continue there. If he wants, he can even apply for appearance through Mukthyar or on special vacalath, after making his appearance, taking bail from that court.

7. Though this court is not fully satisfied with the reasons stated in the petition for transfer, considering the fact that the allegations have been made against the magistrate and he feels that he will not get justice from that court, in order to avoid further complications on this aspect, this court feels that, instead of transferring the case to any court at Kozhikode as claimed by the petitioner, the same can be transferred to some other court in the Union Territory of Lakshadweep itself. So the case STC 6/2015 pending before the Judicial First Class Magistrate Court, Andrott, is withdrawn and transferred to Judicial First Class Magistrate Court, Ameni for disposal. The petitioner is directed to appear before that court on getting summons from that court. The Judicial First Class Magistrate, Andrott, is

directed to transfer the records to Judicial First Class Magistrate Court, Ameni, for disposal. The petition is disposed of as stated above.

Office is directed to communicate this judgment to both the courts immediately.

Sd/-
K. RAMAKRISHNAN, JUDGE

//True Copy//

P.A. to Judge

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