

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.24958 of 2018 and
Crl.M.P.Nos.14081 & 14084 of 2018

1. Emmanuel Fernandez
2. Mark Owen Fernandez ... Petitioners/Accused 1 & 2

Vs

1.The State Represented by
The Inspector of Police,
Crime Branch CID,
Metro Wing,
Chennai - 08. ...1st Respondent/Complaint

2.Don Thomas Fernandez ...2nd Respondent/2nd Respondent

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the records in charge sheet in C.C.No.151 of 2018 on
the file of the Judicial Magistrate Court No.I, Chengalpattu,
Kancheepuram District and quash the same.

For Petitioners : Mr.K.Krishnan
For R1 : Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

When the Court was about to dismiss this petition on merits,
learned counsel for the petitioners sought permission of this
Court to withdraw the same and he has also made an endorsement
to that effect. Permission is granted. Accordingly, this
Criminal Original Petition is dismissed as withdrawn with
liberty to the petitioners to raise all the points before the
trial Court, after the charges are framed, since there are prima
facie materials for framing charges.

2.At this juncture, the learned counsel for the petitioners
submitted that the presence of Mark Owen Fernandez, the 2nd
petitioner herein, before the trial Court, may be dispensed
with, since, he is in Australia.

3.Accepting the said submission, the 2nd petitioner is
directed to surrender before the trial Court and execute a bond
for Rs.25,000/- without sureties under Section 88 Cr.P.C. and he
shall file an undertaking that he will not dispute his identity

and he will engage a lawyer on vakalat and that the nominated advocate will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288] and that the trial Court can proceed in his absence. The 2nd petitioner shall file a photocopy of his passport before the trial Court and also file an affidavit giving his Australian address, e-mail id, phone number and a copy of his Australian Identity Card and his employer's address. The 2nd petitioner is directed to appear before the trial Court for receiving the copies under Section 207 Cr.P.C., while framing the charge under Section 240 Cr.P.C., at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, he shall file a petition before the trial Court under Section 317 Cr.P.C. and the same may be considered favourably. If the 2nd petitioner adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody, as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the 2nd petitioner absconds, the trial Court shall direct registration of a fresh FIR against him under Section 229-A IPC. The trial Court can also inform the concerned authorities in Australia and also his employer, if he absconds. Consequently, connected Miscellaneous Petitions are closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police,
Crime Branch CID,
Metro Wing,
Chennai - 08.

2. The Judicial Magistrate No.I,
Chengalpattu,
Kancheepuram District.

3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.K.Krishnan, Advocate sr 73289.

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SP(26/10/2018)