

K R Biju Vs Sub Inspector Of Police

Court: High Court Of Kerala

Date of Decision: Dec. 13, 2023

Acts Referred: Code of Criminal Procedure, 1973 " Section 482

Hon'ble Judges: P.V.Kunhikrishnan, J

Bench: Single Bench

Advocate: K.V.Rashmi, Sreeja V

Final Decision: Disposed Of

Judgement

P.V.Kunhikrishnan, J

1. This Criminal Miscellaneous Case is filed under Section 482 of the Code of Criminal Procedure, 1973 ("the Code" for the sake of brevity).

2. The petitioner is the accused in CC No. 2522/2013 on the file of the Judicial First Class Magistrate Court, Adoor. It is submitted that the petitioner

was regularly appearing before the lower court and since the petitioner was absent on a particular day, the warrant is issued.

3. The petitioner submits that the petitioner is ready to surrender before the jurisdictional court and if he surrender before the jurisdictional court,

jurisdictional court may remand him without considering their bail application.

4. The Public Prosecutor submitted that no such apprehension is necessary and this court may not pass any direction to the lower court to release the

petitioner on bail and that is a matter to be decided by the trial court.

5. This court in Vineeth Somarajan @ Ambadi v. State of Kerala and another (2009 (3) KHC 471) relied on the dictum laid down by another

learned Single Judge in Biju S. Praveen v. State of Kerala and Another(2007 (2) KLT 280) considered this point. It will be better to extract the

relevant portion of Vineeth Somarajan's case (supra).

"14. The apprehension of the petitioner is that if he appears before the Trial Court, he would be remanded to judicial custody. In Biju v. State of Kerala, 2007

KHC 3436 : 2007 (2) KLT 280 : 2007 (1) KLJ 713 : ILR 2007 (2) Ker. 26 : 2007 (1) KLD 486, Justice A. K. Basheer, after noticing the practice that is being

followed by some learned Magistrates (vide paragraph 16) held at paragraph 18 thus:

'18. As mentioned earlier, Criminal Courts should always be careful while passing orders on bail applications which in effect deal with personal liberty. In cases

where the Court decides to send an accused to custody pending trial, it must be ensured that the Court applies its mind judicially and judiciously with particular

reference to the facts and circumstances of the case. The mere fact that the accused had failed to respond to a summons or that the Court had to issue non bailable

warrant to compel his presence will not ipso facto empower the Criminal Court to remand the accused to custody as a punitive measure when he appears before

the Court on his own volition or is produced in execution of the warrant. The bail application that may be moved on his behalf has to be considered and orders

should be passed on the same day itself since personal liberty of an accused cannot be curtailed in a whimsical or disdainful manner.' I am in respectful

agreement with the dictum laid down in Biju v. State of Kerala.Ã¢â€

6. In the light of the above dictum laid down by this court, I think the apprehension of the petitioner that the jurisdictional court will remand the accused

without application of mind is unnecessary. Therefore, this Criminal Miscellaneous Case is disposed of with the following directions:

1) The petitioner shall surrender before the jurisdictional court within three weeks from today. If an application for bail with advance copy to the

prosecutor concerned is filed at the time of surrender by the petitioner, the jurisdictional court shall consider the same and pass appropriate orders in

accordance with law, ideally on the date of surrender itself.

2) In order to enable the petitioner to appear before the court below, coercive proceedings pending against the petitioner shall be kept in abeyance for

a period of three weeks.