

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 22ND DAY OF MARCH 2023 / 1ST CHAITHRA, 1945

CRL.MC NO. 2292 OF 2023

S.C.NO.309/2019 ON THE FILES OF THE ADDITIONAL SESSIONS
COURT-I (SPECIAL COURT), PATHANAMTHITTA

PETITIONERS/ ACCUSED NOS.2, 5 & 6 :

- 1 MUHAMMED ABDULLA SHA,
AGED 44 YEARS,
VALLIKULATHUVAYALIL VEEDU,
AYLAMON.P.O, PATHAPURAM TALUK,
KOLLAM DISTRICT, PIN - 691 306
- 2 RAMESH,
AGED 33 YEARS,
S/O DEVARAJAN, 89/1, SATHYA NAGAR,
ONDIKKARAPALLAYAM, VILLARAUMPATTI VILLAGE,
ERODE TALUK & DISTRICT,
PIN - 638 004
- 3 PRABHAKARAN @ PRABHU,
AGED 27 YEARS,
STREET NO.27, ATTYAMPATTI VILLAGE,
SALEM DISTRICT, PIN - 637 501

BY ADVS.
V.SETHUNATH
V.R.MANORANJAN (MUVATTUPUZHA)
SREEGANESH U.
OBEID ABDUL MAJEED

RESPONDENT/ RESPONDENT :

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031

BY SMT.SREEJA V., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
22.03.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING :

'C.R.'

BECHU KURIAN THOMAS, J.

CrI.M.C.No.2292 of 2023

Dated this the 22nd day of March, 2023

ORDER

Actus curiae neminem gravabit - "An act of court shall not prejudice a person", is one of the well known axioms followed by the Indian legal system. Petitioners claim benefit of the above maxim for redressal of their grievance.

2. Petitioners are accused Nos.2, 5 and 6 in S.C.No.309/2019 on the files of the Additional Sessions Court-I (Special Court), Pathanamthitta. The offences alleged are under Sections 304 and 308 r/w Section 34 of the Indian Penal Code, 1860.

3. Initially, the above referred case was pending before the Sessions Court, Pathanamthitta from where it was made over to the Additional Sessions Court-I and then to the Additional Sessions Court-IV. On 23.11.2022, the case was adjourned to 13.01.2023 and the proceedings reveal that petitioners were represented through their Advocate. However, on 01.12.2022, the case was suo motu advanced and awaiting orders from the Sessions Judge, posted the case to 13.01.2023. Again, the case was advanced suo motu on 12.12.2022 and

transferred to Special Court dealing with Protection of Child Rights Act, i.e. the Additional Sessions Court-I, Pathanamthitta with the same posting date as '13.01.2023'.

4. Petitioners contend that on 13.01.2023, their Advocate was waiting before the Additional Sessions Court-IV and during roll call, when the case was not called, the Advocate clerk verified the proceedings and realized that the case was transferred and proceeded to the Additional Sessions Court-I. In the meantime, Additional Sessions Court-I had, due to non-appearance of the counsel and the accused, forfeited the bail bond and issued notice to the sureties and warrant to accused 2 and 4 to 6.

The following order was passed on 13.01.2023 :-

"A1 and A3 present. A2 and A4 to A6 called absent. No representation. Counsel called absent. No representation. Bail bond forfeited. Issue non-bailable warrant to accused 2, 4 to 6, notice to sureties to 16.02.2023".

5. When warrant was issued after forfeiture of the bond, an application was filed as CrI.M.P.No.890/2023 before the Additional Sessions Court-I, Pathanamthitta along with the affidavit of the learned counsel himself, seeking to cancel the forfeiture and to permit continuance of the sureties of accused 2, 5 and 6 as per the bond already executed. Accused No.4 was reported as having expired. By the impugned order dated 22.02.2023, the trial court dismissed the application of the petitioners after concluding that the counsel for accused

1 and 3 had appeared before the transferee court on 13.01.2023 and therefore the contention of the counsel for the petitioner that he was unaware of the transfer cannot be believed and that the affidavit filed was misleading.

6. Sri.V.Sethunath, the learned counsel for the petitioners contended that, before transfer of a case or after transfer of a case, specific notice of the transfer must be issued to the parties and to the counsel appearing for the party, and in the absence of such a notice, forfeiture of the bond and issuing warrant to the accused is legally improper. It was also submitted that sureties must also be intimated the transfer before forfeiting their bond.

7. Smt.Sreeja V., the learned Public Prosecutor, on the other hand contended that the alleged lack of knowledge of the counsel has been found to be not believable by the court, especially since the learned counsel for accused 1 and 3 were present in the transferred court and therefore the impugned order is not liable to be interfered with.

8. I have considered the rival contentions.

9. When bail bonds are executed by the accused and the sureties under Section 441 of the Cr.P.C., they are affirming that the accused will appear and be produced without fail before a particular court. The execution of bail bond is with reference to a particular court and includes the court to which the case is subsequently transferred. When the case is transferred, in order to bind the sureties with the bond and before

cancelling or forfeiting the bail bonds for failure of the accused to appear, it is incumbent upon the court to ascertain whether the sureties were aware about the transfer of court that took place, in between.

10. A perusal of form No.37 of the Kerala Criminal Rules of Practice, 1982 relating to bail bonds of sureties is relevant in this context and is as follows :-

We, the marginally named persons, hereby declare ourselves sureties for the above named accused, and we do hereby bind ourselves to produce him before the said court or any other court to which the appeal or the Sessions Case may be transferred or the Court of (b) on the day fixed or whenever called upon by the said Court or the Court of (b)....pending execution of the order of the Court of Appeal/ trial and in case of our making default therein we the said sureties hereby bind ourselves to forfeit to the Government of Kerala each of us the sum of Rupees.....

Note : (a) The name of the Court in which the appeal or Sessions Case is filed should be entered.

(b) The name of the Court to the satisfaction of which bail is furnished should be entered.

When the appeal or the Sessions Case is transferred to another court, the court from which the appeal or the Sessions Case is transferred shall inform the accused and the sureties of such transfer. (emphasis supplied)

11. The above referred note appended to the form of bail bonds

indicate that the transferor court must inform not only the accused but also the sureties that the case has been transferred. As far as the accused is concerned, notice to the counsel would suffice. However, when a case is transferred from one court to another, notice of transfer to the sureties is also essential before the bail bonds can be forfeited and warrant issued.

12. When a case is transferred, that too after suo motu advancing it from the next posting date, it is imperative that the transferor court issues notice or intimates the transfer to the accused and the sureties. In the absence of such a notice to the accused and sureties, the bail bonds cannot be cancelled. If after transfer the accused fails to turn up, proceedings to forfeit the bond of the sureties ought to be resorted to only if notice had been served on the surety. If the transferor court had not issued notice to sureties, then, atleast the transferee court must issue notice to the sureties before forfeiting the bond.

13. In the instant case, the impugned order does not reflect that any notice of transfer had been given either to the accused or to the sureties or even to the counsel for the accused. Solely because the counsel for two other accused had appeared in the transferee court does not by itself ensure that the counsel for the petitioners was aware of the transfer. Further, the transferor court had in fact advanced the case suo motu and then ordered the transfer. The counsel appearing for the petitioners had even filed an affidavit affirming that he was unaware of

the transfer and also that he was appearing in the transferor court on 13.01.2023 without knowledge of the transfer. The Advocate also asserts that the case was advanced suo motu, without issuing notice and was transferred without intimation. There is nothing on record to disbelieve the affidavit of the counsel for the petitioners. The act of the court in transferring the case to another court without intimating the transfer cannot prejudice any person much less the petitioners. In the above circumstances, the impugned order is legally incorrect and is liable to be interfered with.

14. Hence, the order dated 22.02.2023 in CrI.M.P.No.890/2023 in S.C.No.309/2019 on the files of the Additional Sessions Court-I (Special Court), Pathanamthitta is set aside. Further, the order dated 13.01.2023 on the files of the Additional Sessions Court-I, Pathanamthitta forfeiting the bail bond and issuing non-bailable warrant to accused 2, 5 and 6 is also set aside. The proceedings against the petitioners and the sureties initiated as M.C.No.8/2023 and M.C.9/2023 and M.C.No.10/2023 amounts to an abuse of the process of the court and are therefore quashed.

The criminal miscellaneous case is allowed as above.

Sd/-

BECHU KURIAN THOMAS, JUDGE

RKM

APPENDIX OF CRL.MC 2292/2023

PETITIONERS' ANNEXURES :

- Annexure A1 THE TRUE COPY OF THE ORDER IN CR. M. P
890/2023 IN S.C. NO. 309 / 2019 PENDING
BEFORE THE ADDL.SESIONS COURT, NO.I,
PATHANAMTHITTA
- Annexure A2 THE TRUE COPY OF THE CASE STATUS /
PROCEEDINGS TAKEN FROM THE WEBSITE OF THE
DISTRICT COURT, PATHANAMTHITTA IN S.C.
NO. 309/2019
- Annexure A3 THE TRUE COPY OF THE AFFIDAVIT AND
PETITION FILED BY THE COUNSEL FOR THE
PETITIONER DATED 3-2-2023 AND CONSIDERED
ON 16-2-2023