

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 31ST DAY OF JULY 2014/9TH SRAVANA, 1936

Crl.MC.No. 3661 of 2014 ()

SC. NO.923/2000 OF II ADDITIONAL SESSIONS COURT, THIRUVANANTHAPURAM.
CC. NO.801/2003 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II,
NEYATTINKARA.
CRIME NO. 100/1998 OF THIRUVALLAM POLICE STATION ,
THIRUVANANTHAPURAM.

.....

PETITIONER/SOLE ACCUSED:

RADHIKA, AGED 44 YEARS,
D/O. PRASANNA, PULAYANVILAKAM,
PACHALLOOR DESAM, THIRUVALLAM VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.K.K.VIJAYAN,
SMT.MINI GANGADHARAN,
SRI.N.C.SAJUNAM,
SMT.S.SUJINI,
SRI.K.R.RAJESHKUMAR.

RESPONDENT/COMPLAINANT/STATE:

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

BY PUBLIC PROSECUTOR SMT.P. MAYA.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 31-07-2014, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- ANNEXURE A1:** CERTIFIED COPY OF FIR IN CRIME:100/1998 OF THIRUVALLAM POLICE STATION.
- ANNEXURE A2:** CERTIFIED COPY OF FIS.
- ANNEXURE A1(A):** TRUE COPY OF FIR IN CRIME NO.100/1998 OF THIRUVALLAM POLICE STATION.
- ANNEXURE A2(A):** TRUE COPY OF FIS.
- ANNEXURE A3:** TRUE COPY OF PROPERTY LIST.
- ANNEXURE A4:** COPY OF REPORT ALTERING SECTION OF OFFENCE.
- ANNEXURE A5:** PETITIONER'S COPY OF CHARGE IN C.C.NO.801/2003 OF THE JFMC-II, NEYYATTINKARA CONTAINING THE DETAILS OF THE OFFENCE, RECORDS, PROPERTY LIST, WITNESS LIST AND POINTS TO BE PROVED ALONG WITH REPORT. (15 PAGES).
- ANNEXURE A6:** COPY OF CHEMICAL EXAMINATION REPORT.
- ANNEXURE A7:** COPY OF EVIDENCE OF PW1.
- ANNEXURE A8:** COPY OF EVIDENCE OF PW2.
- ANNEXURE A9:** COPY OF EVIDENCE OF PW3.

RESPONDENT'S ANNEXURES:- NIL.

//TRUE COPY//

P.A TO JUDGE

rs.

K. RAMAKRISHNAN, J.

Crl. M.C. Nos.3661 of 2014

Dated this the 31st day of July, 2014

O R D E R

This criminal miscellaneous case is filed by the petitioner, who is the sole accused in C.C.No.801/2003 on the file of Judicial First Class Magistrate Court-II, Neyyattinkara, to quash the proceedings under Section 482 of the Code of Criminal Procedure (hereinafter called 'the Code').

2. It is alleged in the petition that, the petitioner has been arrayed as sole accused in C.C.No.801/2003 of the Judicial First Class Magistrate Court-II, Neyyattinkara, alleging offence under Section 21 of Narcotic Drugs and Psychotropic Substances Act (hereinafter called the 'NDPS Act'). This was originated on the basis of Crime No.100/1998 of Thiruvallam Police station. The case of the prosecution was that, she was found to be in possession of psychotropic substance for sale

in violation of the provisions of the Act. The material object in the case was seen missing. Independent witnesses were examined and it was posted for further examination and for tracing the material objects. The case has been adjourned from time to time for this purpose, from 13.11.2008 to 16.05.2014. If the material objects are not available, there is no purpose in proceeding with the case and that benefit must be given to the accused. So the petitioner has no other remedy, except to approach this court, seeking the following reliefs:

a. To issue an appropriate order or direction quashing Annexure-A1, FIR No.100/1998 of Thiruvallam police station and Annexure-A5 charge in C.C.No.801/2003 on the file of the JFCM-II, Neyyattinkara in the absence of the alleged material objects involved and the further proceedings thereby, against the petitioner/accused.

b. To issue appropriate order or direction as this Hon'ble High Court may deem fit, proper and necessary in the facts and circumstances in the case.

3. On the basis of the allegations made in the petition, this court has called for a report from the Judicial First Class Magistrate Court-II, Neyyattinkara, and also from Sessions Court, Thiruvananthapuram, and the learned

magistrate has sent a report, which reads as follows:

“In obedience to the above made reference, I would like to most humbly submit as follows:

CC.No.801/2003 of this court was taken on file based on the final report filed in Crime No.100/1998 of Thiruvallam police station, registered u/s.21 of NDPS Act. At first, the case was taken on file as SC 923/2000 of Hon'ble Sessions Court, Thiruvananthapuram. On 30.06.2002 charge was framed against the accused by Hon'ble Second Additional Sessions Court u/s.21 of Narcotic Drugs and Psychotropic Substances Act. As the accused pleaded not guilty, summons was ordered to witnesses. The Hon'ble Chief Judicial Magistrate made over that case to this court vide order dated 20.10.2003. Summons was ordered by this court. Cws 2 to 4 were examined as PWs 1 to 3. At the time of examinations of CW1, it was found that the thondy in this case was not forwarded to this court from Hon'ble Sessions Court, Thiruvananthapuram at the time of transferring the case records. From 29.10.2008 onwards the case has been adjourned for getting the thondy transferred from that Hon'ble Court and repeated requests were made to the Hon'ble Sessions Court for the same. I may humbly submit that it has not been received till date. At present the case stands posted to 16.7.2014 forwarding of material objects from that Hon'ble Court”.

4. The Sessions judge also sent a report, which reads as follows:

“The incriminating material objects in S.C.923/2000 on the file of this court were misplaced after the trial of the case from Additional Sessions Court-II, Thiruvananthapuram, which could only be traced out on 23.07.2014, after thorough searching done to find it out from old material objects of disposed cases. That was the reason occurred in transmitting the same to the Judicial First Class Magistrate Court-II, Neyyattinkara for trial and disposal of C.C.No.801/2003 of that court.

The material objects are sent to the Judicial First

Class Magistrate Court-II, Neyyattinkara on 23.07.2014 itself.

This was reason by which the trial and disposal of C.C.801/2003 of the Judicial First Class Magistrate Court-II, Neyyattinkara delayed. The delay caused may kindly be excused”.

5. It is seen from the report of the Sessions Judge that, material objects have been traced and they have been sent to the Judicial First Class Magistrate Court-II, Neyyattinkara, on 23.07.2014.

6. The counsel for the petitioner submitted that, since the material objects were not available at that time, he filed the application to quash the case on the ground as the petitioner is entitled to get the benefit and she is facing trial from 2000 onwards. Since the material objects have been now traced out, the petitioner will be satisfied with the direction to the magistrate to dispose of the case expeditiously.

7. The application was opposed by the learned Public Prosecutor.

8. It is seen from the report of the Sessions Judge that, the case was originally pending before the

Additional Sessions Court-II, Thiruvananthapuram, as S.C.No.923/2000 and later it was revealed that the quantity involved is only a small quantity and so the case was sent to Chief Judicial Magistrate Court under Section 228 of the Code and from there, it was made over to Judicial First Class Magistrate Court-II, Neyyattinkara, for disposal, where it was re-numbered as C.C.No.801/2003. It is true that, some of the witnesses were examined in that case and for want of material objects, further examination of the witnesses could not be proceeded with. It was on that ground, that the petitioner has come before this court to quash the proceedings. Since the material objects have been traced out and they have been sent to the concerned court, the ground alleged by the petitioner for quashing the case against her is not available now. Considering the fact that, the case is of the year 2000 and it was pending before the Judicial First Class Magistrate Court-II, Neyyattinkara, from 2003 onwards, this court feels that, the petition can be disposed of by giving direction to the learned magistrate to

dispose of the case, as expeditiously as possible. So the petition is disposed of as follows:

The Judicial First Class Magistrate Court-II, Neyyattinkara, is directed to dispose of C.C.801/2003 pending before that court, as expeditiously as possible, at any rate within three months from the date of receipt of this order, as the material object have been traced out and sent to that court from Sessions Court, Thiruvananthapuram, on 23.07.2014 as seen from the report of the Sessions Judge.

With the above direction and observation, the petition is disposed of. Office is directed to communicate this order to the concerned court, immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE

// True Copy //

P.A. to Judge