

Kerala High Court

K.V. Shine vs The State Of Kerala on 5 December, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Crl.MC.No. 4484 of 2008()

1. K.V. SHINE,

... Petitioner

Vs

1. THE STATE OF KERALA,

... Respondent

For Petitioner :SRI.C.A.CHACKO

For Respondent :PUBLIC PROSECUTOR

The Hon'ble MR. Justice R.BASANT

Dated :05/12/2008

O R D E R

R. BASANT, J.

Crl.M.C. No. 4484 of 2008

Dated this the 5th day of December, 2008

ORDER

The petitioner faces indictment in a prosecution under Sec.138 of the Negotiable Instruments Act. Cognizance was taken as early as in 2006 as can be ascertained from the number assigned to the case i.e., C.C.No.586/06. The petitioner has not entered appearance before the learned Magistrate. A warrant of arrest has been issued against the petitioner.

2. According to the petitioner, he is laid up. He has suffered a fracture. He is unable to move around. In these circumstances, the petitioner appeared before the court below through counsel and filed an application under Sec.205 Cr.P.C. It was prayed that the warrant of arrest pending against him may be withdrawn and the petitioner may be permitted to appear through counsel before the court below as per the dictum in Jain Babu v. Joseph (2008 (4) KLT 16). By the impugned order, the learned

Magistrate has rejected the application on the ground that there is possibility that the petitioner shall abscond he having not appeared before the learned Magistrate so far and proceedings under Secs.82 and 83 Cr.P.C. having already been initiated against the petitioner.

3. The learned counsel for the petitioner prays that a lenient view may be taken. The petitioner is physically unable to travel to the court. Subject to appropriate conditions the petitioner may be permitted to participate in the trial by appearing through counsel.

4. I have considered all the relevant circumstances. I have gone through the certificate produced by the petitioner which confirms that he has suffered a fracture of the left fibula and needs rest for a period of 8 weeks from 4/11/08. Notwithstanding the fact that the petitioner has been absent before the court below for a long period of time, I am satisfied that a lenient view can be taken and the petitioner can be permitted to participate in the proceedings through counsel subject to appropriate conditions.

5. In the result:

(a) This Crl.M.C. is allowed.

(b) The learned Magistrate is directed to exempt the petitioner from personal appearance and permit him to be represented by his counsel in the pending prosecution i.e., C.C.No.586/06.

(c) The petitioner shall appear through counsel with the requisite authorisation including the authorisation to make his plea through his counsel and such counsel shall represent the petitioner until further orders are passed by the learned Magistrate.

(d) The petitioner shall within a period of two months from this date appear before the learned Magistrate and execute a bond for Rs.50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(e) Needless to say, the coercive processes issued against the petitioner now shall not be executed.

6. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge

