

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

CRL.A.No. 197 of 2015

**MC.NO.204/2012 IN SC.NO.264/2012 OF ADDITIONAL SESSIONS(AD HOC-II) COURT,
KOZHIKODE.**
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APPELLANT/COUNTER PETITIONER:

**ABDULKHADER,
S/O.ABDULRAHIMAN & AISHA,
AGED 52 YEARS, DELI VALAPPU,
CHEMNAD VILLAGE, KASARGOD.**

**BY ADVS.SMT.KEERTHI SOLOMON
SRI.JOLLY ABRAHAM**

RESPONDENT/PETITIONER/STATE:

**STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.**

BY PUBLIC PROSECUTOR SMT.REMA.R

**THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

mbr/

K. ABRAHAM MATHEW, J.

Crl.A. No.197 of 2015

Dated this the 25th day of February, 2015

J U D G M E N T

The appellant was one of the sureties for the accused in S.C.No.264/2012 on the file of the learned Additional Sessions Judge (Ad Hoc-II), Kasaragod. The bond amount was Rs.25,000/-. The accused absconded in the midst of the trial. Proceedings were initiated against him and the appellant. In response to the notice issued to him the appellant did not appear to show cause why the bond amount should not be realised. The learned Sessions Judge ordered him to pay the penalty of Rs.25,000/-. This is challenged in this appeal.

2. In the appeal memorandum it is admitted that the accused is absconding. One of the grounds urged is that the appellant was not aware of that fact. That is not a valid ground. Another ground is that the failure of the appellant

to appear in response to the notice issued to him was not deliberate. That also is not a valid ground to set aside the order.

3. The last ground is that the amount ordered to be paid as penalty is excessive. The bond amount is Rs.25,000/-. I do not think that it is excessive. But the learned counsel submits that a lenient view may be taken having regard to the fact that the appellant is a manual worker. I am inclined to take a lenient view. The amount will be reduced to Rs.17,000/- (Rupees seventeen thousand only). The balance will be remitted.

4. It was also submitted that the direction of the learned Sessions Judge that the appellant shall undergo imprisonment for three months in civil jail is not legal. No doubt it was illegal for the learned Sessions Judge to pass such an order at that stage. Only if it is found impracticable to realise the amount from the appellant such an order could be passed.

In the result, this appeal is allowed in part. The penalty is reduced to Rs.17,000/- (Rupees seventeen thousand only). The balance is remitted. The order directing the appellant to undergo imprisonment in civil jail for three months is set aside. The amount shall be paid within two weeks, failing which, the learned Sessions Judge shall take appropriate steps to realise the amount.

Sd/-
K. ABRAHAM MATHEW
JUDGE

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P.A. TO JUDGE

shg/