

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

TUESDAY, THE 28TH DAY OF APRIL 2015/8TH VAISAKHA, 1937

CRL.A.No. 420 of 2015

CRL.M.C.NO.1594/2014 OF ADDITIONAL SESSIONS COURT -IV, THRISSUR

NAME AND ADDRESS OF THE APPELLANT(S)/RESPONDENTS:

1. JOSE,
S/O.VARGHESE, THEKKEN HOUSE, ALATHUR VILLAGE,
MELADOOR DESOM, MUKUNDAPURAM TALUK.
2. RAJU,
S/O.CHIRUKANDAN, POONOTHPARAMBIL, ALATHUR VILLAGE,
MUKUNDAPURAM TALUK

BY ADV. SRI.O.D.SIVADAS

NAME AND ADDRESS OF THE RESPONDENT(S):

1. THE EXCISE INSPECTOR,
EXCHANGE RANGE, MALA, THRISSUR DISTRICT-680 732.
2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.ABHIJETT LESSLI

**THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 28-04-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

ANIL K. NARENDRA, J.

Crl. Appeal No. 420 of 2015

Dated this the 28th day of April, 2015

JUDGMENT

The appellants are the respondents in Crl. M.C. No. 1594/2014 in Crime No. 22/2012 on the file of the Excise Range, Mala. They have approached this Court in this criminal appeal seeking an order to set aside order dated 23.01.2015 of the Additional Sessions Court No. IV, Thrissur, in the aforesaid Crl. M.C by which the appellants who were sureties are ordered to pay a penalty of Rs. 15,000/- each and in case of default they will have to undergo imprisonment in civil jail for two months, under the proviso to 446(2) of the Code of Criminal Procedure.

2. Going by the averments in this Criminal Appeal the appellants are sureties of the accused in S.C. No. 186/2013 on the file of the Sessions Court, Thrissur. The accused in that case was charge sheeted under Section 55(a) & (i) of the Abkari Act. The accused along with the appellants executed bail bond to

secure their presence and production before court and in case of default, bail bond executed for Rs. 15,000/- each is liable to be forfeited.

3. Though the accused was served with summons to appear in court, neither he nor his counsel was present. On 03.12.2013 also the accused was absent and his counsel applied to excuse his absence. The case was posted to 05.03.2014 and the accused was absent on that day also. There was also no representation on his behalf. It was in such circumstances notice was issued to the appellants/sureties to produce the accused on or before 09.07.2015. In spite of the said notice, they failed to produce the accused. The appellants/sureties were also absent on that day. Therefore, the bail stood cancelled by breach and the bail amount forfeited, which resulted in registration of Crl. M.C.No. 1594/2014 by the court below.

4. According to the appellants, the 2nd appellant is none other than the brother of the accused and non-production of accused before court below was not intentional or deliberate. Further, after cancellation of the bail bond, the accused himself appeared before the court below and he was released on bail with other two sureties and the aforesaid fact was not taken note

of while passing the impugned order.

5. Heard arguments of the learned counsel for the appellants and also the learned public prosecutor.

6. The appellants/sureties, who are bound by the terms of the bond executed by them, are not disputing the fact that the accused was absent in court on 05.03.2014. In spite of the notice issued by the court requiring them to produce the accused on or before 09.07.2014, the appellants failed to produce the accused in court and further, they were also absent in court on 09.07.2014. When a mere absence of the accused for whatever reason, wilful or not would result in forfeiture of bond, the contentions referred to above raised by the learned counsel for the appellants are not at all sustainable to set aside the impugned order.

7. But considering the fact that the 2nd appellant is the brother of the accused and that the accused himself later appeared before the Court below and was released on bail, I find it appropriate to reduce the penalty amount to Rs. 7,500/- (Rupees Seven Thousand and Five Hundred Only) each, which the appellants shall pay within a period of one month from today. If the penalty is not paid or realised, such of the

appellants/sureties shall be liable to undergo imprisonment in civil jail for two months under proviso to Section 446(2) Cr. P.C., as ordered by the court below.

In the result, this Criminal Appeal is disposed of modifying the order passed by the Court below to the extent indicated above.

ANIL K. NARENDRAN
JUDGE

DCS