

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

CRL.A.No. 644 of 2015 ()

IN M.C.NO.48 OF 2015 OF THE ADDITIONAL DISTRICT AND SESSIONS COURT-II,
PATHANAMTHITTA IN S C NO.525 OF 2015

APPELLANT(S)/APPELLANTS/COUNTER PETITIONERS/RESPONDENTS:

1. VASUDEVAN NAIR
NEWPHEW OF KUTTAPPAN NAIR, THATTARAYYATHU VEEDU
VETTOORMURI, KONNI THAZHAM VILLAGE, KONNI TALUK
2. ASHOK KIMAR
S/O.VIJAYAN NAIR
MARUTHENA MADATHILOTHU(SASTHAMTHUNDIL)VETTOOR MURI
KONNI THAZHAM VILLAGE, (KIZHAKKETHONDALIL
KURAMPALA MURI, AMPALLOOR VILLAGE

BY ADVS.SRI.M.T.SURESHKUMAR
SRI.S.SANAL KUMAR
SMT.SMT.SMITHA PHILIPOSE

RESPONDENT(S)/RESPONDENT/RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM-682031

BY PUBLIC PROSECUTOR SMT. P. MAYA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 25-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

dlk

C.T.RAVIKUMAR, J

Crl.A.No. 644 of 2015

Dated this the 25th day of June, 2015

JUDGMENT

This appeal is preferred under section 449 of the Code of Criminal Procedure against the order in M C No.48/2015 passed by the Court of the Additional District and Sessions Judge-II, Pathanamthitta in S.C.No.525/2015. The accused therein was tried for the offence punishable under section 8(2) of the Kerala Abkari Act and was found guilty, convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,00,000/- In default of payment of fine he was directed to undergo simple imprisonment for a further period of 15 days. The accused therein preferred an appeal against the said judgment of conviction as Crl.A.No.271/2015. As per order dated 13.3.2015 invoking the power under section 389(1), Cr.P.C this Court suspended the sentence imposed on the appellant-accused on condition of deposit of an amount of Rs.50,000/- besides execution of bond for Rs.1,00,000/- with two solvent sureties each for the like sum to the satisfaction of the Court of the Additional District and

Sessions Judge-II, Pathanamthitta. Pursuant to the same the appellants herein stood as sureties to the accused-appellant in Crl.A.No.271/2015. The appellant in Crl.A.No.271/2015 who is the accused in S C No.525/2015 failed to effect deposit of Rs.50,000/- as directed by this Court as per order dated 13.3.2015. In the said circumstances, the bail bond executed was cancelled and non-bailable warrant was issued. Notices were issued to the appellants to produce the accused or to show cause why the bond should not be forfeited. In the meanwhile, the appellant in Crl.A.No.271/2015 moved a petition before this Court seeking extension of the time to effect deposit of the amount of Rs.50,000/- as has been directed in and vide order dated 13.3.2015. The appellants herein appeared before the court below and filed a petition seeking extension of time for producing the accused. The learned counsel for the appellants submitted that the fact that the pendency of Crl.M.A.No.2040/2015 in Crl.A.No.271/2015 filed by the appellant therein seeking extension of the time for effecting the deposit of the amount was brought to the notice of the court. However, the court below passed the impugned order dismissing the application seeking extension of time and forfeited the bond and imposed

penalty for the entire bond amount. In otherwords, the penalty of Rs.1,00,000/- each was imposed on the appellants herein. Hence, this appeal.

2. I have heard the learned counsel for the appellants and also the learned Public Prosecutor.

3. The learned counsel for the appellants further submitted that pursuant the order passed by this Court in Crl.M.A.No.2040/2015 in Crl.A.No.271/2015 the court below enlarged the appellant in Crl.A.No.271/2015 for whom the petitioners stood as sureties. It is contended that in the said circumstances taking note of the fact that the present circumstances occurred only on account of failure on the part of the appellant in Crl.A.No.271/2015 to raise the amount and to effect deposit towards the amount of fine as has been ordered by this Court in the order dated 13.3.2015 and taking into account the fact that subsequently, this Court as per order dated 12.6.2015 extended the time for effecting deposit and he deposited the said amount and got enlarged on bail the impugned order may be set aside. It is true that the present situation occurred only on account of failure on the part of the appellant in Crl.A.No.271/2015 to make

the deposit in terms of the order dated 13.3.2015. It is also true that this Court on his application in Crl.M.A.No.2040/2015 extended the time stipulated for effecting the deposit. But, at the same time, being the persons who stood as sureties to the appellant in Crl.A.No.271/2015 the petitioners could not be heard to contend that they were not under an obligation to produce the accused to whom they stood as sureties, when the production of the appellant-accused was sought for. At the same time, it is to be noted that the court below was constrained to issue a non-bailable warrant against the appellant in Crl.A.No.271/2015 and show cause notice to the appellants herein solely on the failure on the part of the appellant in Crl.A.No.271/2015 in effecting deposit in terms of the order dated 13.3.2015. Obviously, the time stipulated thereunder was subsequently extended and time was granted till 24.6.2015. The appellant therein has already deposited the amount in terms of the order dated 13.3.2015 and he was enlarged on bail. Taking into account the entire circumstances even though I am not satisfied with the conduct of the appellants in failing to procure the presence of the appellant-accused before the trial court when his production was ordered I am inclined to modify the order. In the result, while

confirming the imposition of penalty on the appellants the order is modified and the amount of penalty is reduced from Rs,1,00,000/- each to Rs.5,000/- each. This appeal is allowed to the above extent.

Sd/-

C.T.RAVIKUMAR,JUDGE.

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