

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

CRL.A.No. 758 of 2015 (A)

AGAINST ORDER DATED 4.7.2015 IN CRL.M.C.1141/2015 IN SC.NO.22/2014 OF
THE COURT OF ADDL.DISTRICT AND SESSIONS JUDGE, ERNAKULAM
(FOR THE TRIAL OF CASES RELATING TO ATROCITIES & SEXUAL VIOLENCE
AGAINST WOMEN AND CHILDREN)

APPELLANT(S):SURETY NOS. 1 &2 OF ACCUSED NO.5

1.N.U.VARGHESE, AGED 74 YEARS
S/O. ULAHANNAN, NJATTUTHOTTIYIL HOUSE, KUZHIYARA P.O.
CHOTTANIKKARA, MUVATTUPUZHA - 682 312.

2. N.U. JOSEPH, AGED 79 YEARS
S/O. ULAHANNAN, NJATTUTHOTTIYIL HOUSE, KUZHIYARA P.O.
CHOTTANIKKARA, MUVATTUPUZHA - 682 312.

BY ADV. SRI.MATHEW KURIAKOSE

RESPONDENT(S)/STATE:

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

BY PUBLIC PROSECUTOR SMT.P.MAYA

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 05-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.NO.758/2015

APPENDIX

APPELLANTS' EXHIBITS:

ANNEXURE A:TRUE COPY OF THE CHARGE SHEET CUM FINAL REPORT IN CRIME
NO.510 OF 2011 OF PUTHENCROUZ POLICE STATION IN
ERNAKULAM DISTRICT.

ANNEXURE B:TRUE COPY OF THE MEDICAL CERTIFICATE DATED 21.07.2015
ISSUED BY THE SENIOR CONSULTANT NEUROLOGIST OF
LAKESHORE HOSPITAL AND RESEARCH CENTRE LTD, ERNAKULAM.

RESPONDENT'S EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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Crl.Appeal No.758 OF 2015

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Dated this the 5th day of August, 2015

JUDGMENT

This appeal is filed under section 449 of the Code of Criminal Procedure against the order passed by the Court of Additional District and Sessions Judge, Ernakulam (For the trial of cases relating to Atrocities & Sexual Violence against Women and Children) in Crl.M.C.No.1141 of 2015 in S.C.No.22 of 2014. The appellants herein stood as sureties for accused Nos.1, 2 and 4 to 6 in the said sessions case who are facing trial on accusation of commission of offences punishable under sections 143, 147, 148, 341, 323, 324, 506 (ii), 294(b) read with 149 of the Indian Penal Code. Since accused No.5 was absconding notices were issued to the appellants requiring them to procure the presence of accused No.5 or else to assign reason as to why his bail bond should not be forfeited and why they should

not be imposed with penalty. Though the appellants received notice, they did not appear before the court below. Needless to say that they did not assign any reason as has been required of them. In such circumstances the court below forfeited the bail bond and imposed a penalty of ₹25000/- each on the appellants. The court below has also ordered to issue distress warrant through the police. It is in the said circumstances that the captioned appeal has been filed.

2. I have heard the learned counsel for the appellants and the learned Public Prosecutor. When once it is admitted that the appellants stood as sureties to the accused who are facing trial in serious offences and when the accused are absconding, the appellants are bound to procure the presence of the concerned accused. In this case, admittedly, the appellants were issued with notices requiring to procure the presence of accused No.5 or to show cause why the bail bond should not be forfeited and penalties should not be imposed on them. Despite the receipt of such notices, the appellants thought it fit

not to appear before the court and to assign any explanation. Though the second appellant produced a medical certificate as Annexure-B, I am not inclined to think that it would justify his absence before the court below pursuant to the receipt of notice. In fact, the first appellant did not produce any such certificate. If the appellants could appear before the court, despite ailments and stood as sureties they cannot be heard to say that they are unhealthy and ailing. No specific developments to make their health worse, were mentioned in the appeal or in the case of second appellant, in Annexure-B. When that be the circumstances, I am of the considered view that the court below cannot be said to have committed any fault in forfeiting the bail bond and imposing penalty on the appellants. The learned counsel for the appellants relied on a decision of this Court in **Santha v. State of Kerala [2011(2) KHC 353]** to canvass the position that unless and until all steps to recover penalty under section 421 of Code are exhausted the Court ought not to have passed an order under section 446(2) of the Code to put in civil prison. True that in similar

circumstances this Court held that an order to imprisonment in civil prison under section 446(2) of the Code could be passed only on satisfaction that the penalty was not paid and it could not be recovered under section 421 of the Code. True that in this case, even before exhausting the procedures contemplated under 421 of the Code or before satisfying that the penalty could not be recovered the court below ordered to issue distress warrant through the police. It is also evident that as per the aforesaid decision this Court observed that in cases of such nature, it would always be desirable to give a posting for payment of penalty. Having considered the contentions raised by the appellants in the light of the said decision I am of the view that the appellants cannot rely on the said decision to get the impugned order set aside to the extent it ordered forfeiture of the bond and also imposing penalty on them. Still, in the light of the said decision the appellants are justified in contending that they ought to have been granted with an opportunity to pay penalty imposed on them and only in case of their failure and exhausting the procedures under section

421 Cr.P.C such drastic steps ought to have been adopted. I have already found that the appellants are justified in taking up such a contention. In the result, while confirming the impugned order to the extent it forfeited the bail bond and imposed a penalty of ₹25000/- on each of the appellants I am inclined to modify the impugned order to the extent ordered hereunder:-

The appellants shall pay the amount of penalty imposed on each of them on or before 25.9.2015. In case the appellants fail to pay the amount of penalty on or before the said stipulated time, the court below shall take appropriate steps in accordance with the procedures contemplated under section 421 Cr.P.C to recover the amount of penalty. In case it is ultimately found that the amount could not be recovered from the appellants, the court below shall pass appropriate orders under section 446 Cr.P.C.

This appeal is allowed to the above extent.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010