

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

CRL.A.No. 799 of 2015 ()

(AGAINST THE ORDER DATED 14.01.2015 IN M.C.NO.20/2014 IN
S.C.NO.705/2004 ON THE FILES OF ADDL.SESIONS COURT (ABKARI CASES),
KOTTARAKARA

APPELLANT(S):APPELLANTS/COUNTER PETITIONERS/ACCUSED & SURETIES

1. MANIRAJAN, AGED 49 YEARS
S/O.POULOSE @ KUTTAN,POIKAVILA VEEDU
PARUTHAMPARA MURI, EZHUKONE VILLAGE
KOTTARAKARA TALUK, KOLLAM DISTRICT.
2. SYAMLAL, AGED 40 YEARS
S/O.RAJENDRAN,KORANGADI VEEDU
PARUTHAMPARA MURI, EZHUKONE VILLAGE
KOTTARAKARA TALUK, KOLLAM DISTRICT.
3. MINI, AGED 40 YEARS
W/O.CHANDRA BABU, VALIYAVILAMELATHIL
MURUNTHAL, PAVITHRESWARAM VILLAGE
KOTTARAKARA TALUK, KOLLAM DISTRICT
4. SYMALA, AGED 50 YEARS
W/O.JOHN, NJARAVILA KIZHAKKATHIL VEEDU
POOYAPPALLY KIZHAKKU MURI , POOYAPPALLY VILLAGE
KOTTARAKARA TALUK, KOLLAM DISTRICT
5. SHYNI, AGED 26 YEARS
D/O.SUBHASHINI, CHANDRA BHAVANAM VEEDU
CHEERANKAVU MURI, EZHUKONE VILLAGE
KOTTARAKARA TALUK, KOLLAM DISTRICT.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENT(S):COMPLAINANT

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

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 21-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

CRL.A.NO.799/2015

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A:A TRUE COPY OF ORDER DATED 29.01.2015 IN S.C.NO.705/2004
OF THE ADDL.SESIONS COURT (BKARI CASES), KOTTARAKARA.

RESPONDENT'S EXHIBITS:NIL

//TRUE COPY//

P.A.TO JUDGE

C.T. RAVIKUMAR, J.

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Crl.Appeal No.799 of 2015

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Dated this the 21st day of August, 2015

JUDGMENT

This appeal is filed under section 449 of the Code of Criminal Procedure challenging the order passed by the Court of Additional Sessions Judge (Abkari Cases), Kottarakara in M.C.No.20 of 2014 in S.C.No.705 of 2004. Appellants 1 and 2 are the accused in the said sessions case. Appellant No.3 stood as surety to accused No.1 and appellants 4 and 5 stood as sureties to accused No.2. Owing to the failure on the part of appellants 1 and 2 to appear before the court, proceedings were initiated against the appellants 3 to 5 under section 446 Cr.P.C. Bail bonds in respect of accused 1 and 2 were cancelled and bond amount was forfeited after issuing notice to appellants 3 to 5. Resultantly, all the appellants were imposed with a penalty of ₹25,000/- each and distress warrants were also issued against them. It

is challenging the said order that the captioned appeal has been preferred.

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

3.Evidently, appellants 3 to 5 stood as sureties to appellants 1 and 2 who are the accused in S.C.No.705 of 2004. It is the default on the part of the appellants 1 and 2 to appear before the trial court that constrained the trial court to initiate proceedings under section 446 Cr.P.C. Evidently, non-bailable warrants were also issued against appellants 1 and 2. Despite such proceedings appellants 1 and 2 did not appear before the trial court and appellants 3 to 5 could not procure their presence. Above all, appellants 3 to 5 did not appear before the court or assign any explanation as to why the bond should not be forfeited or for not imposing penalty on them. It is in the said circumstances that the trial court passed the impugned order. A

perusal of the provisions under section 446 Cr.P.C would reveal that after imposing penalty with notice to the parties, the court was bound to fix a date for paying the penalty imposed on them. If the penalty imposed is not paid and no explanation whatsoever has been assigned for not paying the penalty within the time fixed for payment treating it as a fine imposed on such persons, steps could be initiated in terms of section 421 Cr.P.C. Needless to say that the question of issuing distress warrant would arise only if the penalty was not paid within the date fixed for payment or if the amount could not be recovered pursuant to the initiation of steps under section 421 Cr.P.C. In this case, evidently, no such steps were taken. But at the same time, considering the fact that appellants 1 and 2 did not surrender before the court and appellants 3 to 5 who stood as sureties to appellants 1 and 2 did not appear before the court and assign any reason, I do not propose to interfere with the impugned order. But at the same time, in view of the failure to follow the procedures and also taking into account the fact that subsequently the accused persons appeared

before the court and after the trial they were acquitted on 28.5.2015, I am of the view that the impugned order can be modified. In the result, while confirming the order of forfeiture/cancellation of the bond and imposition of penalty, the amount of penalty imposed on each of the appellants is reduced to ₹5,000/- from ₹25,000/-. Each of the appellants shall deposit the said amount before the trial court within two weeks from the date of receipt of a copy of this judgment. In case of failure on the part of the appellants to deposit the amount within the stipulated time, the trial court shall take appropriate steps in accordance with the provisions under section 421 Cr.P.C. In case the amount could not be recovered from the appellants even after initiation of such steps, order under proviso (2) to section 446 Cr.P.C shall be passed.

This criminal appeal is allowed in part, as above.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010