

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

CRL.REF.No. 2 of 2010 ()

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CRA 155/2009 of SESSIONS COURT, KOZHIKODE
CC 189/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT, PAYYOLI
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SUO MOTU

AGAINST

- 1. NAJEEB, S/O. AHAMED
P.A.K. HOUSE, VANMUKAM AMSOM
KADALUR DESOM, KOYILANDY TALUK
(APPELLAT IN CrI.A.No.617/2009)**
- 2. NOUFAL, S/O. AHAMMED
P.A.K. HOUSE, VANMUKAM AMSOM
KADALUR DESOM, KOYILANDY TALUK
(APPELLAT IN CrI.A.No.155/2009)**
- 3. STATE OF KERALA**

R3 BY PUBLIC PROSECUTOR SMT. S. HYMA

**THIS CRIMINAL REFERENCE HAVING COME UP FOR ADMISSION ON 25-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

SD

P. UBAID, J.

Crl.Ref.No.2 of 2010

Dated this the 25th day of March, 2015

O R D E R

This reference was registered on the report of the learned Sessions Judge, Kozhikode dated 21.12.2009. Respondent Nos.1 and 2 herein were convicted and sentenced under Sections 448, 354, 323 and 427 IPC by the Judicial First Class Magistrate Court, Payyoli in C.C.No.189/2004. The judgment of conviction was passed by the trial court in 2007. In view of the direction that the sentence under different sections shall run concurrently, the jail sentence is practically imprisonment for one year. Aggrieved by the conviction and sentence, the respondents 1 and 2 (the two accused in the case) preferred appeal before the Court of Session, Kozhikode as Crl.Appeal No.124/2007. On 11.03.2008 the learned Additional Sessions Judge (Adhoc-II) Kozhikode dismissed the said criminal appeal, confirming the conviction and sentence. Thereafter, the two accused brought different appeals by suppressing the fact of dismissal of the joint appeal earlier brought by them. The first accused, Najeeb brought Crl.Appeal No.617/2009 and the second accused, Noufal brought Crl.Appeal

No.155/2009. They also filed applications to condone the delay in filing the appeals. The fact of dismissal of the earlier appeal was not brought to the notice of the Court of Session. Without knowing about such a fact, the learned Sessions Judge condoned delay in filing the two appeals. Thereafter, the parties reported compromise, and filed composition. The learned Sessions Judge accepted the composition. Accordingly, the two accused were given the benefit of acquittal under Section 320(8) Cr.P.C. as per the common judgment dated 15.10.2009 in Crl.Appeal Nos.617/2009 and 155/2009. Later, it came to the notice of the learned Sessions Judge that the two appeals were brought by the accused by suppressing the fact of dismissal of the earlier appeal brought by them. Without knowing about the dismissal of the earlier appeal, the learned Sessions Judge happened to entertain the two appeals brought later.

2. The case record was called for from the court below and was perused by me. I find that Crl.Appeal No.124/2007 brought by the two accused jointly, challenging the conviction and sentence, was dismissed on merits on 11.03.2008. Subsequently

the parties came to terms, and settled the whole issues. Instead of pursuing appropriate remedies under the law for recording composition, they found out an illegal shortcut, and accordingly, brought two appeals later, suppressing the fact of dismissal of the earlier appeal. It is not known whether the learned counsel who brought such appeals did so with the knowledge, or whether the accused suppressed the material facts from the counsel and the court. Any way, the learned Sessions Judge happened to entertain the two appeals and record composition. The common judgment in Crl.Appeal No.617/2009 and 150/2009 is liable to be set aside. I find that the two accused obtained such a judgment fraudulently by suppressing the fact of dismissal of the earlier appeal brought by them, on merits. Instead of pursuing proper remedies under the law, they played fraud upon the court and brought two other appeals. Having done such mischievous acts fraudulently and dishonestly, the respondents 1 and 2 herein cannot request for any lenient consideration. The sentence against them will have to be enforced. I find that the common judgment of the Court of Session dated 15.10.2009 is liable to be

set aside.

In the result, this reference is answered as follows:

- a) The common judgment of the Court of Session, Kozhikode dated 15.10.2009 in Crl.Appeal No.617/2009 and 155/2009 will stand set aside.
- b) The conviction and sentence imposed by the trial court, and confirmed in appeal by the Court of Session on 11.03.2008 as per judgment in Crl.Appeal No.124/2007 will have to be executed.
- c) The trial court will take immediate steps to enforce the sentence against the two respondents (two accused) in C.C.No.189/2004, and report compliance to this Court.

Forward this order along with the records immediately to the court below, and the trial court.

Sd/-

P. UBAID, JUDGE

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