

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

Crl.Rev.Pet.No. 258 of 2015 ()

AGAINST THE JUDGMENT IN CRA 76/2013 of SESSIONS COURT, KOLLAM
AGAINST THE ORDER IN MC 171/2012 of J.M.F.C. - I, KARUNAGAPPALLY

REVISION PETITIONER(S)/APPELLANT/COUNTER PETITIONERS:

1.MADHAVAN, AGED 57 YEARS
S/O. THEVAN, PUTHENNILATHIL HOUSE, KARUVATTA NORTH
KARTHIKAPALLY, ALAPPUZHA.

2.SAJAN, AGED 42 YEARS
MARAKKATTU HOUSE
KANICHANALLOOR MURI
CHEPPAD, ALAPPUZHA

BY ADVS.SRI.R.SUNIL KUMAR
SMT.A.SALINI LAL

RESPONDENT(S)/COMPLAINANT:

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

BY PUBLIC PROSECUTOR SRI.REJI JOSEPH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 30-10-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.R.P. No. 258 of 2015

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Dated this the 30th day of October, 2015

ORDER

This revision petition is directed against the judgment passed by the Court of Sessions Judge, Kollam in Crl.Appeal No.76 of 2013. The said appeal was preferred against the order in M.C.No.171 of 2012 passed by the Court of Judicial First Class Magistrate, Karunagappally. The revision petitioners stood as sureties to the accused in C.C.No.308 of 2009 who were facing trial for the offence punishable under section 392 read with section 34 of the Indian Penal Code. The accused persons absconded. Owing to the failure on the part of the accused persons to appear before the court, notices were issued to the revision petitioners to produce them and the case against them was transferred to the register of 'Long Pending Cases.' On receiving notice in the proceedings initiated under section 446 Cr.P.C,

the revision petitioners herein appeared before the trial court on 30.11.2012. It is evident from the order in the M.C. that the revision petitioners were granted time to offer their explanation and to produce the accused. Nonetheless the bail bonds of the accused were forfeited and the revision petitioners herein were imposed with a penalty of ₹25,000/- each under section 446 Cr.P.C. before the expiry of the time granted in that regard, that too, ignoring the fact that the accused persons surrendered before the court in the meanwhile. Feeling aggrieved by the same, the revision petitioners took up the matter in Crl.Appeal No.76 of 2013. The learned Sessions Judge found that pursuant to the receipt of notice, the revision petitioners appeared before the trial court on 30.11.2012. Paragraph 6 of the impugned order would reveal that on their appearance, they were granted time by the trial court till 31.12.2012 to offer their explanation and also to produce the accused. Evidently, much prior to the expiry of the time granted to them to produce the accused, the accused persons

surrendered before the court on viz., on 10.12.2012. It is also evident from the impugned judgment that subsequent to their surrender, they were enlarged on bail. True that a penalty has been imposed on the revision petitioners for not offering a proper explanation for not producing the accused. As noticed hereinbefore, prior to the expiry of the time granted to them for producing the accused persons, the accused persons had appeared before the trial court and they were enlarged on bail. In such circumstances, I am of the considered view that there is absolutely no justification for insisting the revision petitioners to pay the penalty or to take steps for the recovery of the amount of penalty imposed on the revision petitioners. A perusal of the provisions under section 446(1) Cr.P.C itself would reveal that on imposing penalty the concerned surety has to be given with an opportunity to show sufficient cause as to why the penalty should not be paid. I am of the view that in this case, much prior to the expiry of the time granted by the court for production of the accused persons,

they have surrendered before the court. In such circumstances, there was absolutely no justification for ordering the penalty and at any rate, making the revision petitioners to pay the amount of penalty, especially taking into account the fact that the trial court itself granted time to the revision petitioners to produce the accused persons. In such circumstances, judgment passed by the Court of Session, Kollam in Crl.Appeal No.76 of 2013 as also the order of the trial court are set aside.

This revision petition is allowed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

