

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

Crl.Rev.Pet.No. 463 of 2015 ()

**AGAINST THE JUDGMENT IN CRL.A.NO.539/2014 of SESSIONS COURT,
ERNAKULAM, DATED 28-11-2014.
AGAINST THE ORDER IN M.C.NO.03/2009 IN C.C.NO,170/2004 OF THE JUDICIAL FIRST
CLASS MAGISTRATE COURT - II, PERUMBAVOOR, DATED 20.09.2013.**

REVISION PETITIONER(S)/APPELLANTS/COUNTER PETITIONERS:

- 1. SUDHAKARAN, AGED 61 YEARS,
S/O.VENU, HOUSE NO.227,
CHENGANARKULAM,
KOILAMKODE, CHITTOOR.**
- 2. MUHAMMAD ABU TAHIR, AGED 44 YEARS,
S/O.ABDUL RAHIMAN,
HOUSE NO.5, NANGANKIZHAYE,
MUTHALAMADA, CHITTOOR.**

**BY ADVS.SRI.ALAN PAPALI
SRI.VIPIN NARAYAN**

RESPONDENT(S)/COMPLAINANT:

**STATE OF KERALA REPRESENTED BY
ITS PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

BY PUBLIC PROSECUTOR SMT.V.H.JASMINE.

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
09-04-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

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K. Ramakrishnan, J.

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Dated this, the 09th day of April, 2015.

O R D E R

Counter petitioners in M.C.No.03/2009 on the file of the Judicial First Class Magistrate Court - II, Perumbavoor are the revision petitioners herein. The accused in C.C.No.170/2004 of that court was released on bail on executing a bond for Rs.1,00,000/- with the revision petitioners as sureties. Later, he absconded and so, the learned magistrate forfeited the bond and initiated proceedings against the petitioners as M.C.No.03/2009 under Section 446(1) of Code of Criminal Procedure. Though notice was served on them, they did not appear and give any explanation for the non production of the accused. So, the learned magistrate imposed the entire bond amount of Rs.1,00,000/- each as penalty and it is further ordered, if the amount could not be realised or paid, then, they are directed to be detained in civil prison for one month each. Aggrieved by the same, they filed Crl.Appeal No.539/2014 before the Sessions Court, Ernakulam, the learned Sessions Judge, by the impugned judgment, allowed the appeal in part

by reducing the penalty to Rs.10,000/- each. Aggrieved by the same, the present revision has been filed by the revision petitioners – counter petitioners before the court below.

2. Considering the scope of enquiry, this court felt that the revision can be disposed of after admitting the revision as State is the only party. So, the revision is admitted and disposed of today itself after hearing both sides.

3. The Counsel for the revision petitioners submitted that first petitioner is aged 61 years and they are unable to raise the money and they are also farmers and in fact, the matter has been later settled and the case has been closed. So, he prayed for leniency.

4. The learned Public Prosecutor had submitted that maximum leniency has been shown by the appellate court.

5. It is an admitted fact that accused in C.C.No.170/2004 who was released on bail on executing a bond for Rs.1,00,000/- with revision petitioners as sureties. It is also an admitted fact that, during the pendency of the proceedings, he absconded and so, the proceedings under Section 446(1) of Code of Criminal Procedure was initiated after forfeiting the bond against the revision petitioners as

M.C.No.03/2009 and since they did not appear and submit any explanation for non production of the accused, the learned magistrate has imposed the entire bond amount as penalty and directed them to be detained in civil prison for one month each if the amount is not paid or could not be recovered from them. They filed Crl.Appeal.No.539/2014 before the Sessions Court and the learned Sessions Judge confirmed the order of forfeiture, but, reduced the penalty amount to Rs.10,000/- each granting remission for the balance amount. It is also seen from the order of the appellate court that, later, the accused in C.C.No.170/2004 had appeared and he was convicted by the trial court and though he filed Crl.Appeal No.396/2008, the same was confirmed and he filed Crl.R.P.No.2560/2009 and this court confirmed the conviction and the fine, but, reduced the substantive sentence to imprisonment till rising of court. It is also seen from the order that, later, the matter has been settled and the entire amount has been paid. He appeared and suffered the sentence. It is true that the appellate court had taken leniency. But, considering the circumstances and also pathetic conditions of the sureties in such cases, this court feels that some more

leniency can be shown in imposing the penalty and reducing the penalty to Rs.7,000/- each will be sufficient and that will meet the ends of justice. So, the order of the trial court confirmed by the appellate court of forfeiture is hereby confirmed. But, the order of penalty imposed by the trial court, but, modified by the appellate court is further modified as follows:

The revision petitioners are directed to pay a penalty of Rs.7,000/- each and remission is granted in respect of the balance amount. If the amount is not paid within two months, then, the lower court is entitled to take necessary steps to recover the amount. If the amount is not paid or could not be recovered from the revision petitioners, then, they are directed to be detained in civil prison for two weeks each. If any amount has been deposited by the revision petitioners, then, that may be given credit to this amount. Till two months, the coercive steps taken including the revenue recovery proceedings is directed to be kept in abeyance. If any excess amount has been paid, then, the lower court is directed to refund the excess amount if any to the revision petitioners on their filing application for that purpose.

With the above modification of the penalty amount alone,

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the revision petition is allowed in part and disposed of accordingly.

Office is directed to communicate this order to the concerned court immediately.

Sd/-

K.Ramakrishnan, Judge.

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[True copy]

P.A to Judge