

Ashraf Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/1143815

Court : Kerala

Decided On : Jun-09-2014

Judge : Honourable Mr.Justice Thomas P.Joseph

Appellant : Ashraf

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 9TH DAY OF JUNE 2014 19TH JYAISHTA, 1936 CrI.MC.No. 3028 of 2014 () ----- CRL.MP. NO.599/2014 IN CRL.A. NO.45/2014 OF SESSION COURT, KALPETTA, WAYANAD. CC. NO.478/2010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, MANANTHAVADY. PETITIONERS/ACCUSED 1 AND 2 ----- 1. ASHRAF, S/O.KOYA, AGED 44 YEARS, MAYAKARA HOUSE, KEENHAKADAVU, PANAMARAM P.O., WAYANAD, KALPETTA.

2. ABDUL SAMAD, S/O.KADER HAJI, AGED 34 YEARS, NELLIKOTTU PARAMBIL HOUSE, KEENHAKADAVU, PANAMARAM P.O., WAYANAD, KALPETTA. BY ADV. SRI.M.M.ABDUL RAHIMAN. RESPONDENT/RESPONDENT: ----- STATE OF KERALA, REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM-682 031. BY PUBLIC PROSECUTOR SMT.S. HYMA. THIS

CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 09.06.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: rs. CrI.MC.No. 3028 of 2014 APPENDIX PETITIONER'S ANNEXURES:- ANNEXURE-A: CRL.MC. 599/14 IN CRL.APPEAL. 45/14 IN THE COURT OF SESSIONS KALPETTA, WAYANAD DATED 22.04.2014. ANNEXURE-B: CRL.MC. 599/14 IN CRL.APPEAL. 45/14 IN THE COURT OF SESSIONS KALPETTA, WAYANAD DATED 21.05.2014 RESPONDENT'S ANNEXURES:- NIL. //TRUE COPY// P.A. TO JUDGE rs. K.RAMAKRISHNAN, J.

----- CrI.M.C.No.3028 of 2014 ----- Dated this
the 9th day of June, 2014

ORDER

This is an application filed by the petitioners who are the appellants in CrI.Appeal No.45/2014 on the files of Sessions Court, Kalpetta challenging the order in CrI.M.P. No.599/2014 of that court under Section 482 of the code of Criminal Procedure (hereinafter called as the 'Code').

2. It is alleged in the petition that the petitioners were arrayed as accused in C.C.No.478/2010 on the files of Judicial First class Magistrate's Court-II, Mananthavady and after trial, they were found guilty for the offences under Sections 325, 323 r/w Section 34 of the Indian Penal Code and they were convicted thereunder and sentenced to undergo rigorous imprisonment for one year and also to pay a fine of Rs.3000/- each and in default to undergo simple imprisonment for 1 = months each under Section 325 of the Indian Penal code and further sentenced to undergo rigorous imprisonment for six months and also to pay a fine of Rs.1000/- each, in CrI.M.C.No.3028 of 2014 2 default, to undergo simple imprisonment for one month each under Section 323 of the Indian Penal Code and directed the substantive sentences to run concurrently, and set off was also allowed for the period of detention if any undergone by them as under trial prisoner. Aggrieved by the same, the petitioners filed CrI.Appeal No.45/2014 before the Sessions Court, Kalpetta, Wayanad District and also moved Criminal M.P.No.599/2014 for suspension of Sentence. The learned Sessions Judge by Annexure A order suspended the sentence on condition of executing a bond for

Rs.25,000/- with two solvent sureties and also on further condition of depositing the fine amount within one month and posted the case for compliance report to 21/05/2014. Since the condition was not complied with, the learned Sessions Judge dismissed the application vide Annexure B order. That is being challenged by the petitioners before this Court.

3. When the application came for hearing today for admission, the counsel for the petitioners submitted that CrI.M.C.No.3028 of 2014 3 if one week time is granted, the petitioners will be able to comply with the condition and they could not comply with the condition within the time due to financial crisis.

4. The application was opposed by the learned Public Prosecutor.

5. Though I am not fully satisfied with the submissions made by the counsel for the petitioners for non compliance of the conditions imposed by the court below, taking a lenient view, this Court feels that some time can be granted for the petitioners to comply with the conditions imposed by the court below. If the petitioners deposit the fine amount within one week from today, before the trial court, then the petition CrI.M.P.No. 599/2014 in CrI. Appeal No. 45/2014 will be deemed to have been allowed and the learned Magistrate is directed to permit the petitioners to execute the bond as directed in the order as well for suspension of the sentence as directed by the sessions court. So the petition is disposed of as follows: Petitioners are given time of one week from today to CrI.M.C.No.3028 of 2014 4 deposit the fine amount and also execute a bond as directed by the Sessions Judge in CrI.M.P.No.599/2014 in CrI.Appeal No. 45/2014 of Sessions Court, Kalpetta. If the petitioners deposit the amount, then the learned Magistrate is directed to permit the petitioners to execute the bond as directed by the Sessions Judge in the above order as well. Then the execution of sentence will be suspended. If the petitioners did not comply with the conditions as directed by this Court within the time, then the order of the learned Sessions Judge dismissing application will stand. With the above direction and observation the petition is disposed of. Hand over the copy of the order to the counsel for the petitioners and also communicate the order to the lower court immediately. Sd/-K.RAMAKRISHNAN JUDGE MJL