

Muneer Vs. State of Kerala

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Court : Kerala

Decided On : Aug-01-2014

Judge : Honourable Mr.Justice V.K.Mohanan

Appellant : Muneer

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN FRIDAY,THE1T DAY OF AUGUST201410TH SRAVANA, 1936 CRL.A.No. 1477 of 2013 ----- M.C.NO. 16/2012 IN S.C. 546/2011 OF ADDITIONAL DISTRICT & SESSIONS COURT, VADAKARA ----- APPELLANTS / CP1 & 2 : ----- 1. MUNEER, S/O.KUNHABDULLA, THAZHETHALAVANCHERY, KOTTAPALLI AMSOM, VADAKARA TALUK, KOZHIKODE DISTRICT.

2. MOIDU, S/O.AMMED, THEKKEYIL HOUSE, KOTTAPPALLY AMSOM, DESOM, VADAKARA TALUK, KOZHIKODE DISTRICT. BY ADV. SRI.T.K.KUNHABDULLA RESPONDENT / COMPLAINANT : ----- STATE OF KERALA, REPRESENTED BY THE S.H.O., VADAKARA POLICE STATION, THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM682031. BY PUBLIC PROSECUTOR SRI.DHANESH MATHEW MANJOORAN THIS CRIMINAL

APPEAL HAVING COME UP FOR ADMISSION ON 0108-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Msd. CRL.A.No. 1477 of 2013
----- APPENDIX PETITIONER(S)' ANNEXURES:
ANNEXURE I : CERTIFIED COPY OF THE (AGAINST THE

ORDER

DATED 31.07.2012 IN M.C. 16/2012 IN S.C. 546/2011 OF THE ADDITIONAL SESSIONS COURT, VADAKARA. ANNEXURE II: PHOTOCOPY OF THE RELEVANT PAGES OF THE PASSPORT OF THE FIRST APPELLANT. ANNEXURE III: TRUE COPY OF THE "ONE AND THE SAME CERTIFICATE" ISSUED BY THE VILLAGE OFFICER, KOTTAPPALLY DATED 11.09.2013. ANNEXURE IV: THE PHOTOCOPY OF THE RELEVANT PAGES OF THE PASSPORT OF THE 2D APPELLANT. RESPONDENT(S)' ANNEXURES: NIL
//TRUE COPY// P.A.TO JUDGE. Msd. V.K.MOHANAN, J
===== Crl.Appeal No.1477 of 2013
===== Dated this the 1st day of August, 2014

ORDER

The appellants are sureties 1 and 2 respectively for A3, A5, A6, A7 and A8 in S.C No.546/2011 of the Court of Additional Sessions Judge, Vadakara. As they failed to produce the accused in terms of their contractual obligation, the court below initiated proceedings u/s 446 of the Code of Criminal Procedure and, thus, registered M.C No.16/2012 in S.C No.546/2011 and finally, by order dated 31.07.2012 imposed a penalty of `5,000/- on each of the accused for whom they stood as sureties. It is the above order challenged in this Appeal.

2. Heard Adv.Sri.T.K.Kunhabdullah, learned counsel appearing for the appellant and the learned Public Prosecutor.

3. Learned counsel for the appellant vehemently submitted that the appellants were in gulf and no notice was served on them and, Crl.Appeal No.1477/2013 2 therefore, they were not aware of the fact that the accused for whom they stood as sureties were failed to appear before the Court. The learned counsel submits that had they got notice they could have produced the accused in time. It is also the submission of the learned counsel that the quantum of penalty imposed is

exorbitant and unlawful. It is also submitted that the trial ended in acquittal as the matter has been settled between the accused and the de facto complainant and hence order fixing liability upon the appellant u/s 446 of the Code of Criminal Procedure is illegal.

4. On a perusal of Annexure I, which is the impugned order, it can be seen that though show cause notices were issued to the appellants and they received the same, they did not choose to appear before the court and no explanation is offered for their failure to produce the accused.

5. Counsel for the appellant submitted that the endorsements on the back side of the show cause notices are made by the officer CrI.Appeal No.1477/2013 3 himself who attempted to serve notices and actually the notices were not received by the appellants. I cannot accept the said contention especially when the court below had verified the notices and came to the conclusion that the notices were served on the appellants. Appellants being the sureties for the accused, they are bound to produce the accused as and when required by the court in terms of their undertaking made by them, when they executed the bond. No satisfactory explanation is offered by the appellants in not producing the accused. Therefore, I find no reason to interfere with the finding of the court below fixing the liability upon the appellants u/s 446 of the Code of Criminal Procedure.

6. However, it can be seen that even though each of the appellants were directed to pay `5,000/- as penalty with respect to one bond, each of them has to pay altogether `25,000/- since they were stood as sureties for five accused. So, according to me, while sustaining the order fixing liability of the appellants u/s 446 of the CrI.Appeal No.1477/2013 4 Code of Criminal Procedure, the quantum of penalty imposed by the court below can be modified and reduced into `3,000/-, instead of `5,000/- and the same will be sufficient to meet the ends of justice. In the result, this appeal is disposed sustaining the order of the court below fixing the liability upon the appellants u/s 446 of the Code of Criminal Procedure, but, the penalty amount is reduced to `3,000/- each for not producing A3, A5, A6, A7 and A8 (3000 X515,000 each). Each of the appellants are thus directed to deposit a sum of `15,000 altogether within 45 days from today and if no amount is paid as

directed above, the court below can proceed with the coercive steps to realize the above modified penalty amount. The court below is directed to keep in abeyance the coercive steps, if any taken, for a period of 45 days. Appeal is disposed of.
Sd/- V.K.MOHANAN, JUDGE vdv //True Copy// P.Ato Judge

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