

Abdul Razak vs State of Kerala

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Court : Kerala

Decided On : Aug-25-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : CRL.A/377/2009

Appellant : Abdul Razak

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945
CRL.A NO. 377 OF 2009 AGAINST THE ORDER/JUDGMENT IN MC
NO.31/2008 OF ADDITIONAL SESSN.COURT (ADHOC-
II)KASARAGODE APPELLANTS: 1 ABDUL RAZAK
S/O.MOIDEENKUNHI, SANNADKA HOUSE, KUNJATHUR VILLAGE
AND POST, KASARAGOD. 2 HASANABHA AGED 49/2009,
S/O.AHAMMED, KODI HOUSE, PAVOOR POST, PAVOOR VILLAGE,,
KASARAGOD. BY ADVS. SRI.T.B.SHAJIMON SMT.GOVINDU
P.RENUKADEVI RESPONDENT: STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, ERNAKULAM. SMT S REKHA SR P THIS

CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 25.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 25th day of August, 2023 This is an appeal filed under Section 449 of Cr.P.C. challenging the order passed in M.C.No.31/2008 in S.C.No.63/2008 dated 15/12/2008 by the Additional Sessions (Adhoc) Court-II, Kasaragod (for short 'the court below').

2. The appellants stood as sureties for the accused

in S.C.No.63/2008 by executing a bond of 10,000/- each. The accused failed to appear at the court below and non- bailable warrant was issued against him. The proceedings under Section 446 of Cr.P.C. were initiated against the appellants. Even though, the court below granted time to the appellants to produce the surety, they failed to comply it. Hence, the court below imposed a penalty of 10,000/- each to the appellants as per the impugned order. The said

order is under challenge in this Crl. Appeal.

3. Heard both sides.

4. It is not in dispute, that the appellants stood as

sureties for the accused in S.C.No.63/2008 by executing a bond for 10,000/- each. It is also not in dispute that, the accused failed to appear in the court below and coercive steps were initiated against him. The mere failure on the part of the accused to appear before the court on the date of hearing would result in automatic forfeiture of the bond. Even though, the court below granted sufficient time to the appellants to produce the accused, they could not produce him. Hence, I am of the view, that the court below was absolutely justified in treating the bond executed by the appellants as forfeited.

5. The court below imposed a penalty of 10,000/-

each. It is submitted by the appellants that the penalty imposed is excessive. Considering the entire facts and circumstances of the case, I am of the view that, the penalty imposed can be reduced to 5,000/- each. In the result, the appeal is allowed in part. The penalty imposed by the court below as per the impugned

order is reduced to 5,000/- (Rupees Five Thousand only)

each, which shall be paid by the appellants within two months from today, failing which, appropriate legal action will follow to realise it. Sd/- DR.KAUSER
EDAPPAGATH, JUDGE APA

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