

Nalini vs State of Kerala

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Court : Kerala

Decided On : Apr-25-2023

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : CRL.A/573/2023

Appellant : Nalini

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
TUESDAY, THE 25TH DAY OF APRIL 2023 / 5TH VAISAKHA, 1945
AGAINST THE ORDER DATED 20.09.2022 IN M.C. NO.1108/2022 IN
SC CASES)/ADDL.DISTRICT AND SESSIONS JUDGE, THALASSERY
APPELLANTS/COUNTER PETITIONERS/SURETIES: 1 NALINI AGED
53 YEARS W/O. KUMARAN, KARUVALLIYIL (H), VILANGOTTUR,
THRIPPONGOTTUR, KANNUR DISTRICT, PIN - 670676 2 KALYANI
AGED 61 YEARS D/O. ONAKKAN, KARUVALLIYIL, POYILOOR,
THRIPPONGOTTUR, KANNUR DISTRICT., PIN - 670676 BY ADV
K.DILIP RESPONDENT/STATE: STATE OF KERALA REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA

ERNAKULAM, KOCHI, PIN - 682031 BY ADV ADV MAYA M.N. -PUBLIC PROSECUTOR THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 25.04.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

The appellants are the counter petitioners in M.C.

No.1108/2022 in S.C. No.20/2022 on the files of Court of Special Judge (POCSO Act Cases)/Additional District and Sessions Judge, Thalassery. The aforesaid M.C. was initiated under Section 446 of Cr.P.C. against the appellants who were sureties of the accused No.2 in S.C. No.20/2022. Even though the accused No.2 was released on the strength of the bonds executed by the petitioners as sureties, later, the said accused absconded, and consequently, proceedings under Section 446 of Cr.P.C. were initiated against them. Even though notices were issued to the appellants in this regard, they did not appear and consequently the impugned order was passed imposing an amount of Rs.50,000/- (Rupees fifty thousand only) each as penalty. This appeal is submitted in such circumstances.

2. Heard Sri.K.Dilip, learned counsel for the appellants and Smt.Maya M.N., learned Public Prosecutor for the State.

3. The learned counsel for the appellants submits that, there were no willful latches on their part in not procuring the

presence of the accused. Despite all earnest efforts, the accused could not be traced out. According to the appellants, the accused No.2 was their neighbor, and they belong to a poor family who have no means to pay the penalty as directed by the learned Sessions Judge. The appeal was submitted in such circumstances.

4. On the other hand, the learned Public Prosecutor would

oppose the aforesaid allegation by pointing out that the offence involved in this case is under the provision of POCSO Act and therefore, no leniency could be shown in this case.

5. I have gone through the records. As far as the initiation

of proceedings under Section 446 of Cr.P.C. as against the appellants are concerned, I am of the view that, no interference could be made. This is particularly because of the reason that, admittedly the appellants failed to ensure the presence of the accused No.2, which is against the undertaking given by them before the learned Sessions Judge in the form of bonds. However, even while upholding sustainability of the proceedings under Section 446 of Cr.P.C., I am of the view that, the penalty imposed

upon the appellants appears to be on higher side. It is to noted that in Sahadevan and another v. State of Kerala [2018 (1) KLD 87] this Court has held that, in all cases, it is not necessary for the court to impose the amount equivalent to the value of the bond as penalty. In this case the specific contention put forward by the learned counsel for the appellants is that, they are unable to pay the amount of penalty to be paid, as directed by the learned Sessions Judge. Considering the entire facts and circumstances of the case, I am of the view that, some leniency can be shown as regards the amount of

penalty. In the facts and circumstances of the case, I deem it appropriate to fix the penalty as Rs.25,000/- (Rupees twenty five thousand only) each. In the result, the order dated 20.09.2022 in M.C.

No.1108/2022 in S.C. No.20/2022 passed by the Special Judge for the trial of offences under POCSO Act, Thalassery is hereby confirmed subject to the modification that, the amount of penalty shall stand re-fixed as Rs.25,000/- (Rupees twenty five thousand only) each. The appellants are directed to deposit the said amount

within a period of two months from today, failing which, it shall be open for the learned Sessions Judge to initiate appropriate proceedings. Sd/- ZIYAD RAHMAN
A.A. JUDGE scs

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