

Tomy Devassia vs State

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Court : Kerala

Decided On : Jul-29-2022

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

Appeal No. : CRL.A/798/2022

Appellant : Tomy Devassia

Respondent : STATE

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
FRIDAY, THE 29TH DAY OF JULY 2022 / 7TH SRAVANA, 1944 CRL.A
NO. 798 OF 2022 AGAINST THE ORDER/JUDGMENTMC 3/2020 OF
ADDITIONAL DISTRICT COURT & SESSIONS COURT - II,
PATHANAMTHITTA / II ADDL.M.A.C.T. APPELLANT/S: TOMY
DEVASSIA AGED 50 YEARS POOVATHETTU HOUSE,
MANNACKANADU MURI, ELACKADU VILLAGE, MEENACHIL TALUK.,
PIN - 682025 BY ADV P.YADHU KUMAR RESPONDENT/S: STATE
REPRESENTED BY PUBLIC PROSECUTOR , HIGH COURT OF
KERALA , ERNAKULAM, PIN - 682031 OTHER PRESENT: ADV
SREEJA V - PP THIS CRIMINAL APPEAL HAVING COME UP FOR

ADMISSION ON 29.07.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING: ZIYAD RAHMAN A.A., J
..... Crl.A.No. 798 of 2022
..... Dated this the 29th day of July, 2022

ORDER

The appellant is one of the sureties of the accused in S.C.No.417/2017 on the files of the Additional Sessions Court -I (Special Court), Pathanamthitta. Grievance of the appellant is against the imposition of penalty upon him consequent to the proceedings initiated against him and other surety under Section 446 of Cr.P.C.

2. The accused in the aforesaid case was released on the strength of the bonds executed by the appellant and

another, as sureties. However, later the accused wherein absconded, and even though notices were issued to the appellant, they neither appeared nor took any steps to produce the accused. The impugned order was passed in such circumstances imposing penalty at the rate of Rs.50,000/- each to the appellant and the other surety. This order is under challenge in this appeal.

3. Heard, Sri. P. Yadhu Kumar, the learned counsel appearing for the petitioner and Smt. Sreeja V. the learned Public Prosecutor appearing for the State.

4. The learned counsel for the appellant submits that the proceedings initiated against the appellant is not justified. It is also pointed out that, subsequently, the accused was arrested and remanded to the judicial custody. In such circumstances, it is pointed out that the proceedings against the appellant is unwarranted.

5. After perusing the records and hearing both sides,

I am of the view that there cannot be any legal infirmity in initiating the proceedings against the appellant under Section 446 of Cr.P.C. It is evident from the records that even though notice was served upon the appellant, he did not appear and offered any satisfactory explanation for not producing the appellant. Therefore, the

initiation of proceedings under Section 446 Cr.P.C. is proper. However, with regard to the rate of penalty imposed upon the appellant, I am of the view that some indulgence can be shown. It is evident that the accused was arrested subsequently and he is now under judicial custody. In such circumstances, the penalty imposed upon the appellant which is at the rate of Rs.50,000/- can be modified. On considering the facts and circumstances of the case, I deem it appropriate to fix the same as Rs.10,000/-. In the

result this Criminal Appeal is allowed in part. While upholding the order of initiating the proceedings under Section 446 Cr.P.C against the appellant herein, the rate of penalty is modified as Rs.10,000/-. The appellant shall deposit the aforesaid amount within a period of one month from today, failing which, it shall be open for the learned Sessions Judge to initiate appropriate proceedings.

Sd/- ZIYAD RAHMAN A.A., JUDGE Dxy

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