

Johny vs State of Kerala

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Court : Kerala

Decided On : Jun-30-2021

Judge : Honourable Mr.Justice K. Babu

Appeal No. : CRL.A/1686/2006

Appellant : JOHNY

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE K. BABU WEDNESDAY,
THE 30TH DAY OF JUNE 2021 / 9TH ASHADHA, 1943 CRL.A NO.1686
OF 2006 AGAINST THE ORDER DATED 25.7.2005 IN
M.C.NO.1847/2005 OF ADDITIONAL SESSIONS COURT, FAST
TRACK COURT NO.II (ADHOC), THRISSUR
APPELLANTS/RESPONDENTS: 1 JOHNY S/O.CHAKKU AGED 46
YEARS THEKKAN HOUSE, KUTTICHIRA VILLAGE, CHEMBANKUNNU
DESOM, MUKUNDAPURAM TALUK. 2 JOSE S/O.DEVASSY, AGED 62
YEARS PARAKKA HOUSE, KUTTICHIRA VILLAGE, VEERANCHIRA
DESOM, MUKUNDAPURAM TALUK. BY ADV SRI.A.X.VARGHESE
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED

BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.
BY SR.PUBLIC PROSECUTOR SRI.M.S.BREEZ THIS CRIMINAL
APPEAL HAVING COME UP FOR ADMISSION ON 30.06.2021, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
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JUDGMENT

Dated this the 30th day of June 2021 This appeal arises from the order dated 25.7.2005 in Sessions Case No.706 of 2004 on the file of the Additional Sessions Judge, Fast Track Court No.II (Adhoc), Thrissur.

2. Accused No.1 in the above referred case was released on bail by the court below. The appellants were his

sureties. The appellants had executed a bond undertaking to produce the accused as and when required. When the presence of the accused was required by the court below, the appellants failed to produce him before the court. When they failed to comply with the conditions stipulated in the bail bond, the bond was forfeited. Subsequently, the court below registered M.C.No.1847 of 2005 against the present appellants, to show-cause why penalty should not be imposed. When the appellants failed to show sufficient cause, the court below imposed a penalty of Rs.20,000/- each.

3. Aggrieved by the order of the court below, the appellants have come up with this appeal.

4. Heard the learned counsel for the appellants and the Crl.A.No.1686/2006 3 learned public prosecutor.

5. The learned counsel for the appellants submitted that

the court below ought to have seen that the appellants came to know about the fact that the accused absconded only when they received notice from the court. It is further submitted that the failure of the appellants to produce the accused was for reasons beyond their control. The learned counsel for the appellants further

submitted that the amount of penalty imposed by the court below is exorbitant.

6. The points to be considered in this case are :

(i) Whether the court below is justified in imposing penalty against the appellants.

(ii) Whether the penalty imposed is excessive.

Points 1 and 2: Admittedly, accused No.1 in S.C.No.706 of 2004 was released on bail on the bond executed by the appellants undertaking that the accused will be produced as and when required by the court. The fact that the accused failed to appear before the court when required is also admitted. Notice to show- cause under Section 446 Cr.P.C. was also admittedly served on the appellants. The contention of the counsel for the appellants is that the appellants did not get sufficient time to produce the

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accused before the court and that the failure on their part is due to the reasons beyond their control. It is also their case that the penalty imposed is exorbitant and that the appellants are hailing from poor financial background. Where a bond is for appearance of a person before court, default on his appearance when he is not exempted by the court will lead to automatic forfeiture. There is no necessity of recording any satisfaction, reason and proof at the automatic stage of forfeiture of the bond, as the mere absence of the accused on the date fixed would result automatically in the forfeiture of the bond. The law on this point was settled by the Division Bench of this Court in Thundichi v. State of Kerala (2009 (4) KLT 67).

7. Once the bond has been forfeited, the court is

competent to call upon the concerned sureties or the person bound by it to pay the penalty therein or to show cause why it should not be paid. On perusal of the records in this case, it is seen that notice as contemplated under Section 446 of Cr.P.C. was served on them and the present appellants failed to show sufficient cause for the non payment of penalty. In these circumstances, I find that the court below is perfectly justified in holding that the appellants are liable to pay penalty.

8. What remains for consideration is whether the penalty

imposed is excessive. It is submitted that the appellants are having no means to pay the penalty. It is further submitted that they are hailing from impecunious circumstances. Considering the

facts and circumstances, I am satisfied that penalty of Rs.5,000/-

(Rupees Five thousand only) each is sufficient in the interest of justice. No other points arise for consideration. In the result, the appeal is allowed in part. The penalty payable by the appellants is modified as Rs.5,000/- (Rupees Five Thousand only) each. Where the penalty is not paid and cannot be recovered in the manner provided in the Code, the appellants shall be liable to imprisonment in civil jail for a period of one month. Sd/- K.BABU JUDGE csl

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