

Kunhikoya Vs. The State of Kerala

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Court : Kerala

Decided On : Dec-09-2014

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Kunhikoya

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY, THE 9TH DAY OF DECEMBER 2014 18TH AGRAHAYANA, 1936 CRL.A.No. 1281 of 2014 () ----- CRL.MC NO. 59/2013 IN S.C. NO. 15/2013 OF THE ADDITIONAL SESSIONS JUDGE'S COURT-I. ----- APPELLANTS/SURETIES 1 TO 2 ----- 1. KUNHIKOYA, AGED 56 YEARS, S/O. KUNHIKOYA THANGAL, THOTTUMUGATH HOUSE, KARUVAMBRAM (P.O), MANJERI, MALAPPURAM DISTRICT.

2. SANKARAN S/O. ITTIKEERAN, PAYILCHALA, ERAND TALUK, NILAMBUR, MALAPPURAM DISTRICT. BY ADVS. SRI. K.M. JAMALUDHEEN SMT. LATHA PRABHAKARAN RESPONDENT : ----- THE STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682 031 BY PUBLIC PROSECUTOR SRI. R. GITHESH THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 09/12-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: bp ALEXANDER

THOMAS, J.

----- Crl.A. No. 1281 of 2014 -----
----- Dated this the 9th day of December, 2014

JUDGMENT

This is an appeal filed under S.449(ii) of the Code of Criminal Procedure to impugn the order dated 14.3.2014 of the Court of Additional Sessions Judge - I, Kalpetta, Wayanad District passed in Crl.M.C.No.59/2013 registered in S.C.No.15/2013.

2. The appellants herein were stood as sureties to the accused in Crime No.790/2010 of Kalpetta Police Station which led to the institution of S.C.No.15/2013. The accused therein was released on bail on execution of bonds by the appellants, who stood as sureties to the accused for Rs.50,000/- for ensuring the attendance of the accused and further undertaking to forfeit the bond amount of Rs.50,000/- to the State Government in the event of the accused making default in appearance. It is stated in the impugned order that the accused started remaining continuously absent and it led to the issuance of notices to the sureties. Even after receiving notice, both of them remained absent and did not file any explanation. Accordingly, it has been ordered by the court Crl.A. No. 1281 of 2014 2 below that the appellants should pay a penalty of Rs.20,000/- each and that the balance amount out of the bail bond amount of Rs.50,000/- each is remitted. It is further ordered that in case the above said impugned penalty amount becomes irrecoverable, the appellants herein shall undergo imprisonment in civil prison for two months.

3. Heard Sri.K.M.Jamaludheen, learned counsel for the appellants and the learned Public Prosecutor for the respondent.

4. It is averred in ground 'D' of the appeal memorandum that no notice is served to the appellant before passing the impugned order and that the court below committed grave error by passing order of penalty imposing huge amount without giving notice to the appellants. It is further stated in paragraph 4 of the appeal memorandum that no notice was served to the appellants by the court below

informing that the surety offered by them was cancelled and that the appellants were thus prevented from even producing the accused and to get their surety released. That the appellants came to know about the passing of the order when the Village Officer of Manjeri Village office approached the appellants CrI.A. No. 1281 of 2014 3 with revenue recovery notice during the first week of August, 2014. It is further urged by the learned counsel for the appellants that the impugned order, more particularly, the direction therein that, in case the penalty amount becomes irrecoverable from the appellants, then they shall undergo imprisonment for two months in civil prison is ultra vires in view of the principles laid down by this Court in the decision reported in Santha v. State of Kerala [2011 (2) KLT816. It has been held by this Court in the aforesaid decision (supra) that unless and until all steps to recover penalty as a fine under Section 421 of the Code are exhausted, the Court shall not pass an order directing imprisonment. But that an order of imprisonment in civil jail under Section 446 (2) of the Code can be passed, only after the court is satisfied that penalty is not paid and that it cannot be recovered under S. 421 of the code. If any order is passed by the court to imprisonment in civil jail, under the proviso to Section 446(2) of the Code, prior to taking steps and exhausting all steps under S.421 of the Code to recover the penalty, such order will be premature and it will not be legal, etc. Accordingly, it was held therein that the impugned order therein passed against CrI.A. No. 1281 of 2014 4 the appellants therein, to suffer imprisonment in civil jail for six months, is not only premature but is also illegal and without proceeding to recover the penalty as per law as envisaged under S. 421 of the Code, the Court below cannot pass an order for imprisonment.

5. Moreover, the appellants have a specific case that, they have not received notice on the proceedings before the court below and that they were denied reasonable opportunity of being heard, etc. In this view of the matter, this Court is inclined to remit the matter back to the court below for fresh orders to be passed after providing reasonable opportunity of being heard to the appellants.

6. Accordingly, the impugned order dated 14.3.2014 passed by the court below in Criminal Miscellaneous Case No. 59/2013 registered in S.C.No. 15/2013 is stand set aside. The appellants shall appear before the court below on 14.1.2015 at 11

a.m. The court below may proceed to hear the matter on that day or any other day as deemed proper and after affording a reasonable opportunity of being heard to the appellants and shall pass orders afresh in the matter. The court below, while passing fresh orders shall also bear in Crl.A. No. 1281 of 2014 5 mind the legal principles laid down by this Court in Santha v. State of Kerala [2011 (2) KLT816. With these observations and directions, the Criminal Appeal stands allowed as indicated above. Sd/- ALEXANDER THOMAS, JUDGE rka //True copy// P.S to Judge Crl.A. No. 1281 of 2014 6 Crl.A. No. 1281 of 2014 7

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