

Haneefa Vs. The State of Kerala

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Court : Kerala

Decided On : Dec-19-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Haneefa

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 19TH DAY OF DECEMBER 2014 28TH AGRAHAYANA, 1936 CrI.Rev.Pet.No. 2206 of 2014 ()
----- AGAINST THE

JUDGMENT

IN CRL.A742014 of SESSIONS COURT, MANJERI DATED 23-08-2014 AGAINST THE

ORDER

IN MC1862011 of J.M.F.C., MALAPPURAM DATED 21-12-2013 REVISION PETITIONER/SURETY NO.2: ----- HANEEFA, AGED 52 YEARS, S/O. BAVUNNI, CHERIYAKALATHOPPU PARAMBIL HOUSE, MANATHALA BRIDGE, KALLAYI P.O., KOZHIKODE DISTRICT. BY ADVS. SRI. BABU S. NAIR SRI. R. RANJITH (K/489/2011) RESPONDENT/STATE: ----- THE STATE OF KERALA REPRESENTED BY THE PUBLIC

PROSECUTOR HIGH COURT OF KERALA, KOCHI - 682031. BY PUBLIC PROSECUTOR SRI.N. SURESH THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 12-12-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. RAMAKRISHNAN, J.

..... CrI.R.P.No.2206 of 2014
..... Dated this the 19th day of December, 2014.

ORDER

The second counter petitioner in M.C.No.186/2011 on the file of the Judicial First Class Magistrate Court, Malappuram is the revision petitioner herein.

2. The accused in C.P.No.61/2011 was released on bail on the basis of bail granted by this Court on executing a bond for Rs.One lakh with the revision petitioner and another as sureties. The revision petitioner absconded and in spite of non bailable warrant issued, his presence could not be procured. Though notice was issued to the sureties, they also did not produce the accused. So the learned Magistrate has initiated proceedings against the counter petitioners in the lower court under section 446 of the Code of Criminal Procedure and the revision petitioner alone appeared as the first counter petitioner reported no more and after hearing the counsel for the petitioner, the court below had imposed the entire bond of Rs. One lakh as penalty. Aggrieved by the same, he filed CrI.A.No.74/2014 before the Sessions Court, Manjeri and the CrI.R.P.No.2206 of 2014 2 learned Sessions Judge had reduced the penalty to Rs.75,000/- for granting remission of Rs.25,000/-. Aggrieved by the same, the present revision has been filed by the revision petitioner, the second counter petitioner before the court below.

2. Considering the scope of enquiry and State is the only respondent, this Court felt that the revision can be admitted, heard and disposed of today itself after hearing the counsel for the revision petitioner and the learned Public Prosecutor appearing for the State. So the revision is admitted, heard and disposed of today itself.

3. The counsel for the revision petitioner submitted that revision petitioner is a collie and he is also suffering from some illness and had to incur huge amount for his treatment. So he prayed for leniency.

4. This was opposed by the Public Prosecutor on the ground that maximum leniency has been shown by the appellate court.

5. It is an admitted fact that the accused in C.P.61/2011 of Judicial First Class Magistrate Court, Malappuram was released on bail on executing a bond for Rs. One lakh with the revision Crl.R.P.No.2206 of 2014 3 petitioner and another as sureties. It is also an admitted fact that the accused did not appear. Thereafter in spite of nonailable warrant issued, his presence could not be procured. Though notice was issued to the sureties, it was revealed that the first counter petitioner, one of the sureties, is no more and the present revision petitioner was served with notice and he had appeared and expressed his inability to produce the accused. So, court below had initiated proceedings against the revision petitioner and another surety as MC.186/2011 and since no sufficient reason has been given for non production of the accused and since first counter petitioner in the lower court is no more, the court below had imposed the entire bond as penalty against the present revision petitioner. In the appeal, that was reduced to Rs.75,000/-. He prayed some more leniency in this regard. It is true that bond is executed for the purpose of enforcing the same, if any violation has been committed by the parties to the bond. But, at the same time, if in spite of efforts taken and due to no willful fault on the part of the sureties presence of the accused could not be procured, then it is not proper to penalise the sureties heavily for the non appearance of the accused. It is seen from the orders of the court below Crl.R.P.No.2206 of 2014 4 that in spite of efforts taken by the revision petitioner, whereabouts of the accused could not be traced out and in spite of nonailable warrant issued, presence of the accused could not be procured as well. So, under the circumstances, it cannot be said that it is a deliberate omission on the part of the revision petitioner in not producing the accused. Showing of too much of leniency also will give a wrong message to the society as observed by the court below in imposing the penalty. But at the same time, pathetic condition of the sureties also will have to be considered by the court while imposing penalty. In this case, though he is having

property, he is earning his livelihood by coolie work as submitted by the counsel for the revision petitioner. Further, it is also mentioned in the lower court order that he had submitted that he is having some ailment and undergoing treatment and it is true that he has not produced any documents. So considering these facts as a mitigating circumstance, this Court feels that imposing penalty of Rs.20,000/- will be sufficient and that will meet the ends of justice. So order of the court below as modified by the appellate court is set aside and the same is modified as follows: Crl.R.P.No.2206 of 2014 5 The revision petitioner is directed to pay penalty of Rs.20,000/- and remission is granted in respect of the balance amount. If the petitioner has remitted any amount earlier, then the lower court is directed to adjust the same towards this amount. The revision petitioner is granted two months time to pay the amount. If amount is not paid or recovered from the revision petitioner, then the revision petitioner is directed to be detained in civil prison for one month. With the above modification of the penalty imposed, the revision is allowed in part and disposed of accordingly. Office is directed to communicate this order to the concerned court. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge Crl.R.P.No.2206 of 2014 6

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