

Geetha Vs. State of Kerala

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Court : Kerala

Decided On : Jul-13-2006

Reported in : 2006(3)KLT960

Judge : K. Hema, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 446 and 446(1)

Appeal No. : Crl.A. No. 1261 of 2006

Appellant : Geetha

Respondent : State of Kerala

Advocate for Def. : K.J. George, Public Prosecutor

Advocate for Pet/Ap. : T. Gopalakrishnan, Adv.

Judgement :

K. Hema, J.

1. This appeal is filed against the order passed under Section 446 of the Code of Criminal Procedure ('Code', for short). The appellants are the sureties who were directed to pay penalty under Section 446 of the Code.

2. The appellants along with one of the accused, executed a bond for appearance of the accused before court. But, accused absconded after executing the bond.

Hence, proceedings were initiated against them under Section 446 of the Code. On appearance of the appellants, they were directed to show cause why bond should not be forfeited for the laches. They stated that they are unable to produce the accused, as he is absconding. The trial court found their explanation to be not satisfactory. Hence, it was found that the bond was forfeited. The appellants were, therefore, directed to pay penalty of Rs. 20,000/- each under Section 446 of the Code. The said order is under challenge in this appeal.

3. On a plain reading of the order itself, I find that the order is per se illegal. Hence, even the records in this case may not be necessary for a disposal of the appeal. It is curious to note that the trial court treated the proceedings under Section 446 of the Code as an 'offence'. This is revealed from what is specifically recorded in the very opening paragraph of the order. It is also revealed from the impugned order that the trial court did not record the grounds of proof of satisfaction that the bond has been forfeited. Recording of grounds of such proof is mandatory requirement without which the court cannot proceed any further under Section 446 of the Code. The impugned order is unsustainable on this ground itself.

4. Further, a notice is stated to have been issued to the appellants calling upon him to show cause 'why the bond should not be forfeited'. For the said show-cause notice, the appellants gave an explanation which was found by the court as not satisfactory. Thereafter, the trial court, straight away passed the order, 'bond is forfeited and the counter petitioners are directed to pay a penalty of Rs. 20,000/- each under Section 446(1) of the Code'. This procedure adopted by the trial court is also illegal.

5. There is nothing in the order to show that the court had issued any notice, calling upon the sureties to pay penalty or to show cause why they shall not pay the penalty. What the surety has to be called upon is, not to show cause 'why bond should not be forfeited', as seen from the order. Therefore, the order passed against the appellant-surety, without complying with the mandatory requirement of showing cause etc. under Section 446(1) of the Code is per se, illegal. It is clear from the above impugned order that the trial court, evidently, did not apply its mind to the most fundamental and inevitable requirement of Section 446(1) of the Code.

6. As per Section 446 of the Code, once it is proved to the satisfaction of the court that the bond has been forfeited, the court shall record 'grounds of such proof and thereafter, call upon to the sureties to pay the penalty or to show cause why it shall not be paid. The recording of such facts and issuance of a show cause notice for the above purpose is a must, before passing an order for penalty. But, the trial court did not comply with this legal requirement. The reason stated by the trial court to direct payment of penalty is 'that the bond is forfeited'. The court cannot, on the mere satisfaction of forfeiture of bond alone, impose any penalty under Section 446 of the Code, The order under challenge is, therefore, per se, illegal and hence it is set aside.

7. In the nature of the case, I find it essential that the trial court reconsiders the matter afresh, in strict compliance of the provision contained in Section 446 of the Code, and at any rate, not treating the proceedings as an 'offence'.

In the result, the order under challenge is set aside and the case is remanded to the court below for fresh consideration and disposal in accordance with law. The case shall be disposed of within one month from the date of this order. The appellants are directed to appear before the trial court on 21.8.2006.