

Kamala Vs. State of Kerala

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Court : Kerala

Decided On : Dec-01-2014

Judge : Honourable Mr. Justice Alexander Thomas

Appellant : Kamala

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS MONDAY, THE 1ST DAY OF DECEMBER 2014 10TH AGRAHAYANA, 1936 CRL.A.No. 1244 of 2014 ()
----- AGAINST THE

ORDER

DATED 19.06.2014 IN M.C NO.23/2014 IN S.C NO.203/2012 ON THE FILE OF SESSIONS COURT, KALPETTA, WAYANAD APPELLANT(S)/1ST & 2ND COUNTER PETITIONERS: ----- 1. KAMALA, W/O CHAMI, ULLATTUPARAMBIL HOUSE, KUPPADI AMSOM, SULTHAN BATHERY THALUK, WAYANAD.

2. SARADHA, W/O VASU, PARAMBIL HOUSE, KUPPADI AMSOM, SULTHAN BATHERY THALUK, WAYANAD. BY ADVS.SRI.M.R.SASITH PANICKER SRI.M.R.SARIN PANICKER RESPONDENT(S): ----- STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR HIGH COURT OF KERALA,

ERNAKULAM68203 BY PUBLIC PROSECUTOR SMT.R.REMA THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON0112-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: VDV ALEXANDER THOMAS, J.

===== Crl.Appeal No.1244 of 2014
===== Dated this the 1st day of December, 2014

JUDGMENT

This appeal has been filed under Section 449 of the Code of Criminal Procedure to impugn the order dated 19.06.2014 of the Sessions Court, Kalpetta, Wayanad district in Criminal Miscellaneous Case No.23 of 2014 in S.C No.203 of 2012. The two petitioners herein stood as sureties for the accused in the aforementioned Sessions Case No.203 of 2012 on the file of the Sessions Court, Kalpetta. The Sessions Case arose out of Crime No.638 of 2007 registered by the Sulthan Batheri Police alleging offences punishable under Sections 450 and 511 of 376 of Indian Penal Code, against the accused. The accused was released on bail on the petitioners herein as sureties executing bond for Rs.25,000/- each on 18.12.2012. When the trial of the Sessions Case was scheduled, the accused absconded and the present Crl.M.C was registered by the court below and notice was issued to the sureties. Accordingly, since the petitioners were unable to secure the production of the accused, the court below imposed penalty of Rs.10,000/- each on the two appellants herein Crl.Appeal No.1244 of 2014 2 and remitted the balance portion in respect of the bail bond amount of Rs.25,000/- each. It is further ordered that in case the amount becomes irrecoverable, the petitioners herein shall undergo imprisonment for two months each in Civil Prison.

2. It is impugning this order passed by the court below imposing penalty of Rs.10,000/- each on the appellants that the present appeal has been instituted under Section 449 of the Code of Criminal Procedure.

3. When the above appeal came up for consideration, this Court admitted the appeal on 27.11.2014 and ordered that all further coercive action in pursuance of the impugned order shall be kept in abeyance.

4. Sri.M.R.Sasith Panicker and Sri.V.Vinar, learned Advocates appearing for the petitioners in this case, had made a specific submission that subsequently the accused was arrested and produced before the court below and that he was granted bail. The learned Public Prosecutor was specifically requested to get instructions on this point.

5. Heard the learned advocates appearing for the petitioners and the learned Public Prosecutor. Crl.Appeal No.1244 of 2014 3 6. The learned counsel appearing for the petitioners would raise a primary submission that the impugned order directing that in case the penalty amount becomes irrecoverable the petitioners shall undergo imprisonment for two months each in Civil Prison etc. is per se ultravires and illegal as held by this Court in the case Santha Vs State of Kerala reported in 2011(2) KLT816 This Court in the aforementioned Santha's case (paragraphs 13 and 14) held that unless and until all steps to recover penalty under Section 421 of the Code of Criminal Procedure are exhausted the court shall not pass an order under Section 446(2) of the Code of Criminal Procedure to order imprisonment in Civil Jail and that an order of imprisonment in Civil Jail under Section 446(2) of the Code of Criminal Procedure can be passed only after the court is satisfied that the penalty is not paid and that it cannot be recovered under Section 421 of the Code of Criminal Procedure. If an order is passed by the court to imprisonment in Civil Jail under the Proviso to Section 446(2) of the Code of Criminal Procedure prior to taking steps and exhausting all steps under Section 421 of the Code of Criminal Procedure to recover the penalty, such an order will be Crl.Appeal No.1244 of 2014 4 premature and it will not be legal. Therefore, it was held in the order passed against the appellant therein to suffer imprisonment in Civil Jail for six months is not only premature but illegal and that without giving an opportunity to the surety to pay penalty and without proceeding to recover the penalty as per Section 421 of Code of Criminal Procedure, the court ought not to have passed the order for imprisonment etc.

7. On a consideration of the facts and circumstances emerging in this case it is only to be held that the impugned order to the extent it orders that in case the amount become irrecoverable the petitioners shall undergo imprisonment for two months in Civil Prison etc. is illegal in view of the principles laid down by this Court

in Santha's case, cited supra. Obviously, the procedure contemplated under Section 421 of the Code of Criminal Procedure has not been adhered to before ordering that the petitioners will have to face imprisonment as ordered in the impugned order.

8. Learned counsel for the appellants should also submit that the appellants are women and have no independent income of their own and that they had stood as sureties only because the Crl.Appeal No.1244 of 2014 5 accused was their relative. More importantly, the appellants would submit that the accused in the instant case was subsequently arrested and produced before the court below and that he was granted bail. Learned Public Prosecutor on instructions fairly submitted that the accused in the instant case was arrested and produced before the court below and was later granted bail by the said court. In view of the fact that the accused has already been arrested and subsequently released on bail now, it is only just and fair that the petitioners who are women who had stood as sureties need not be penalized any further. In this view of the matter, the impugned order is set aside. The Crl.Appeal is allowed as indicated above. Sd/- ALEXANDER THOMAS, JUDGE vdv //True Copy// P.A to Judge

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